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STATEMENT OF INFORMATION

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH RICHARD M. NIXON PRESIDENT OF THE UNITED STATES OF AMERICA

Book V—Part 1

DEPARTMENT OF JUSTICE/ITT LITIGATION— RICHARD KLEINDIENST NOMINATION HEARINGS

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MAY–JUNE 1974

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FOREWORD

By Hon. Peter W. Rodino, Jr., Chairman,
Committee on the Judiciary

On February 6, 1974, the House of Representatives adopted by a vote of 410-4 the following House Resolution 803:

> RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

Beginning in November 1973, acting under resolutions referred to the Committee by the Speaker of the House and with a special appropriation, I had begun to organize a special staff to investigate serious charges against the President of the United States.

On May 9, 1974, as Chairman of the Committee on the Judiciary, I convened the Committee for hearings to review the results of the Impeachment Inquiry staff's investigation. The staff began its initial presentation the same day, in executive session, pursuant to the Committee's Impeachment Inquiry Procedures adopted on May 2, 1974.

By June 21, the Inquiry staff had concluded its initial presentation.

On June 25, the Committee voted to make public the initial presentation including substantially all of the supporting material

presented at the hearings. The Committee also voted to make public the President's response, which was presented to the Committee on June 27 and June 28 in the same form and manner as the Inquiry staff's initial presentation.

Statements of information and supporting evidentiary material were compiled by the Inquiry staff in 36 notebooks and furnished in this form to each Member of the Committee. The notebooks presented material on several subjects of the Inquiry: the Watergate break-in and its aftermath, ITT, dairy price supports, domestic surveillance, abuse of the IRS, and the activities of the Special Prosecutors. In each notebook a statement of information relating to a particular phase of the investigation was immediately followed by supporting evidentiary material, which included copies of documents and testimony (much already on public record), transcripts of Presidential conversations and affidavits.

The staff also presented to the Committee written reports on President Nixon's income taxes, Presidential impoundment of funds appropriated by Congress, and the bombing of Cambodia.

Book V, presented to the Committee under the general heading of "ITT," dealt with two areas of the Inquiry. First, material was presented with respect to the possible relation between the 1971 settlement of three antitrust cases filed against ITT and ITT's pledge of financial assistance to the San Diego Convention and Tourist Bureau for expenses related to the 1972 Republic National Convention. Second, material was presented with respect to the testimony of

Richard Kleindienst and John Mitchell during Kleindienst's confirmation hearings before the Senate Judiciary Committee.

Every effort was made to preclude inferences in the presentation of this material. A deliberate and scrupulous abstention from conclusions, even by implication, was observed.

With respect to the Presidential recorded conversations, the Committee determined to hear the recorded conversations in their entirety. The Presidential recorded conversations were neither paraphrased nor summarized by the Inquiry staff. Thus, no inferences, or conclusions were drawn for the Committee. During the course of the hearings, Members of the Committee heard each recording and simultaneously followed transcripts prepared by the Inquiry staff. Each of these transcripts is reprinted under the appropriate Statement of Information.

During the course of the hearings, the Committee found it necessary to issue a subpoena to President Richard Nixon requiring tape recordings of 19 Presidential conversations related to the ITT matters before the Committee. The Committee also subpoenaed the President's copies of daily news summaries which were compiled by White House staff members from February 22, 1972 through June 9, 1972. The Presdient has not yet responded to this subpoena.

Prior to the Committee's issuance of the subpoena on June 24, 1974, the President furnished to the Committee an edited transcript of a meeting he held with H. R. Haldeman and John Mitchell on April 4, 1972 at which the Kleindienst nomination hearings were discussed.

In a few instances, Ranking Minority Member Mr. Hutchinson and I determined, pursuant to authority granted us by the Committee, to defer the release of evidentiary material or to delete it for one of the following reasons:

1) Because the public interest in making the material public was outweighed by the potential prejudice to the rights of defendants under indictment and awaiting trial.

2) Because the information was classified or otherwise required confidential treatment,

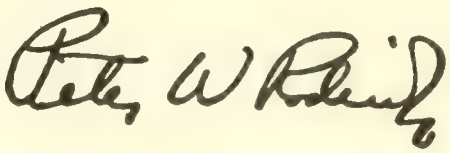
3) Because the material was only marginally pertinent and was considered to be defamatory, degrading or embarrassing, or,

4) Because the material was not pertinent to Presidential responsibility within the outer limits of an impeachable offense within the meaning of the Constitution.

The Committee on the Judiciary is working to follow faithfully its mandate "to investigate fully and completely" whether or not sufficient grounds exist to recommend that the House exercise its constitutional power of impeachment.

I believe that the readers of these volumes will see that the Committee's primary effort in carrying out its mandate has been to obtain an objective, impartial presentation which will enable each Member of the Committee to make an informed judgment in fulfilling his or her constitutional responsibility.

I also believe that the publication of the record of these hearings will provide readers with a clear idea of the particulars of the investigation and that the proximity of the evidence will assure them that no statement of information is offered without supporting evidentiary material.



July 1974

CONTENTS

Foreword..... iii

Introductory Note..... ix

Statement of Information..... 1

Statement of Information
and Supporting Evidence - Part 1..... 67

Appendix
A. List of persons referred
to in Book V..... 972

B. Correspondence between
Congressman J. J. Pickle
and Special Prosecutor
Leon Jaworski, May 30,
1972 and November 27, 1973..... 978

NOTE: Book V is published in two parts. Part 1 contains the entire statement of information and supporting evidentiary material for paragraphs 1-22. Part 2 contains paragraphs 23-58, the supporting evidentiary material for those paragraphs, and the Appendix.

INTRODUCTORY NOTE

The material contained in this volume is presented in two sections. Section 1 contains a statement of information footnoted with citations to evidentiary material. Section 2 contains the same statement of information followed by the supporting material.

Supporting material consists of information obtained at hearings before the Senate Select Committee on Presidential Campaign Activities; information developed in executive session by other Congressional committees; information furnished to the Committee by the Grand Jury of the District of Columbia and by other grand juries; information furnished to the Committee by government agencies; transcripts of tape recordings of conversations among President Nixon and his key associates prepared by the Committee staff; information furnished to the Committee by the President, the Executive Departments of the Government, the Special Prosecutor, and other information obtained by the Committee, much of which was already on the public record.

Each page of supporting evidence is labeled with the footnote number and a description of the document or the name of the witness testifying. Copies of entire pages of documents and testimony are included, with brackets around the portions pertaining to the statement of information. Markings on the documents include item numbers and receipt stamps of the House Judiciary Committee and other agencies from which the Committee received material.

In a few instances, names of persons in sensitive positions have been deleted from documents at the request of the CIA, FBI and other investigative agencies. Some documents contained deletions whe the Committee received them.

In the citation of sources, the following abbreviations are used: "SSC" for Senate Select Committee on Presidential Campaign Activities; "SJC" for Senate Judiciary Committee; and "KCH" for hearings before the Senate Judiciary Committee on the nomination of Richard Kleindienst to be Attorney General.

STATEMENT OF INFORMATION

DEPARTMENT OF JUSTICE / ITT LITIGATION -

RICHARD KLEINDIENST NOMINATION HEARINGS

Part 1

1. By memorandum dated April 23, 1969 from Deputy Attorney General Richard Kleindienst, acting as Attorney General*, and Assistant Attorney General Richard McLaren, head of the Antitrust Division, to John Ehrlichman, Counsel to the President, Kleindienst and McLaren urged approval of the commencement of an antitrust action against the International Telephone and Telegraph Corporation (ITT) challenging its acquisition of Canteen Corporation. Commencement of the suit was approved and on April 28, 1969 the suit was begun in the United States District Court for the Northern District of Illinois.

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*Because Attorney General John Mitchell's former law firm had represented an ITT subsidiary, Mitchell recused himself and Deputy Attorney General Kleindienst acted as Attorney General in connection with the litigation.

		Page
1.1	Memorandum from Richard Kleindienst and Richard McLaren to John Ehrlichman, April 23, 1969 with attached draft complaint (received from White House).....	70
1.2	Memorandum from Richard McLaren to Richard Kleindienst, April 25, 1969, 3 Kleindienst Confirmation Hearings (KCH) 1237.....	88
1.3	United States v. International Telephone and Telegraph Corporation, Civ. No. 69c-924, Docket, 1-2....	89
1.4	Richard Kleindienst testimony, 2 KCH 96.....	91
1.5	John Mitchell testimony, 2 KCH 539-40.....	92
1.6	Memorandum from Richard McLaren for the Attorney General, April 7, 1969 (received from Department of Justice).....	94

2. On August 1, 1969 two antitrust suits similar to the Canteen suit were commenced in the United States District Court for the District of Connecticut challenging ITT's acquisition of the Hartford Fire Insurance Company and Grinnell Corporation.

Page

2.1 United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civ. No. 13319, Docket, 1-2..... 102

2.2 United States v. International Telephone and Telegraph Corporation and Hartford Fire Insurance Company, Civ. No. 13320, Docket, 1-2..... 104

2.3 Memorandum from Richard McLaren for the Attorney General, June 20, 1969 (received from Department of Justice)..... 106

2.4 Memorandum from Richard McLaren for the Deputy Attorney General, approved July 25, 1969 (received from Department of Justice)..... 120

3. During 1969, 1970 and 1971, Harold S. Geneen, President of ITT, met on numerous occasions with White House staff members, other Administration officials and members of both houses of Congress to discuss various matters, including international monetary policy, the Office of Foreign Direct Investment policy, antitrust policy, balance of payments, revenue sharing and expropriation by foreign governments. During the summer of 1969 Geneen sought a personal meeting with the President to discuss the ITT antitrust cases. His request was denied because the President's advisers thought that such a meeting was inappropriate.

		Page
3.1	Harold Geneen testimony, 2 KCH 776-80.....	132
3.2	Memorandum from Hugh Sloan to John Ehrlichman, June 30, 1969 (received from White House).....	137
3.3	Memorandum from Dwight Chapin to Peter Flanigan, July 16, 1969 (received from White House).....	138
3.4	White House "White Paper," The ITT Anti-Trust Decision, January 8, 1974, 1, 3.....	139

4. During September 1969 Colonel James Hughes, Military Assistant to the President, spoke with Dita Beard, an ITT lobbyist, about the pending antitrust suit. Hughes reported on the conversation in a memorandum to Ehrlichman dated September 19, 1969.

		Page
4.1	Memorandum from James Hughes to John Ehrlichman, September 19, 1969 (received from White House).....	142

5. In August 1970 officials and representatives of ITT held five meetings with Administration officials, including Vice President Spiro Agnew, Secretary of Commerce Maurice Stans, Assistant Attorney General McLaren and White House counsel John Ehrlichman and Charles Colson to discuss antitrust matters in general and the ITT antitrust litigation in particular. In another meeting, Geneen and Attorney General Mitchell met to discuss overall antitrust policy with respect to conglomerates. At these meetings and in subsequent letters and memoranda ITT officials sought to persuade Administration officials that McLaren's antitrust views, as reflected in his conduct of the ITT litigation, were ill-advised and inconsistent with the Administration's antitrust policy.

Page

5.1 Memorandum from Tod Hullin to John Ehrlichman, August 4, 1970 (received from White House).....145

5.2 Letter from Richard McLaren to Tod Hullin, July 30, 1970, with attached memorandum from Richard McLaren to John Ehrlichman (received from White House).....147

5.3 Memorandum from Richard McLaren to Tod Hullin, August 3, 1970, with attachments (received from White House).....153

5.4 Letter from "Ned" [Edward Gerrity] to Vice President Spiro Agnew, August 7, 1970, with attached memorandum (received from House Interstate and Foreign Commerce Committee).....163

5.5 Memorandum from John Poole to Files, August 7, 1970 (received from Department of Justice).....166

5.6 Memorandum from Tod Hullin to Richard McLaren, August 10, 1970 (received from White House).....168

Page

5.7 Letter from Thomas Casey to Charles Colson, August 7, 1970, with attachment (received from White House)..... 169

5.8 Memorandum from Charles Colson to John Ehrlichman, August 10, 1970 (received from White House)..... 177

5.9 Memorandum from Tod Hullin to John Mitchell, August 11, 1970 (received from White House)..... 178

5.10 John Mitchell testimony, 2 KCH 540, 542-43, 546, 549-50..... 179

5.11 Memorandum from Edward Gerrity to John Ryan, August 10, 1970 (received from Michael Mitchell)..... 185

5.12 Memorandum from John Ryan to William Merriam, August 24, 1970, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 154-56..... 186

6. On September 15, 1970 the trial in ITT-Grinnell began. In memoranda dated September 17, 1970 from Ehrlichman to Attorney General Mitchell and October 1, 1970 from Colson to Ehrlichman, the ITT litigation was discussed. Ehrlichman and Colson stated their concern that McLaren's conduct of the ITT cases constituted an attack on "bigness per se" contrary to the Administration's expressed antitrust policy.

		Page
6.1	United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civ. No. 13319, Docket, 5.....	190
6.2	Memorandum from John Ehrlichman to John Mitchell, September 17, 1970 (received from White House).....	192
6.3	Memorandum from Charles Colson to John Ehrlichman, October 1, 1970, with attachment (received from White House).....	193

7. The trial of ITT-Grinnell was completed on October 30, 1970 and the case was taken under advisement. A judgment for ITT on the merits was rendered on December 31, 1970. A notice of appeal was filed on March 1, 1971.

Page

7.1 United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civ. No. 13319, Docket, 1,6-7..... 214

7.2 United States v. International Telephone and Telegraph Corporation, Opinion, December 31, 1970, 324 F. Supp. 19..... 217

8. On March 3, 1971 at ITT's request Geneen and William Merriam, ITT Vice President and Director of Washington Relations, met with Ehrlichman to discuss antitrust matters.

		Page
8.1	John Ehrlichman log, March 3, 1971 (received from SSC).....	256
8.2	Letter from William Merriam to John Ehrlichman, March 4, 1971 (received from White House).....	257
8.3	William Merriam testimony, 3 KCH 951.....	258

9. On March 20, 1971, on the motion of Solicitor General Erwin Griswold, the time for the government to perfect its appeal in ITT-Grinnell by filing its jurisdictional statement was extended from March 31, 1971 to April 20, 1971.

Page

9.1 United States v. International Telephone and Telegraph Corporation, Application for Extension of Time and Order of the Supreme Court, March 20, 1971, and letter from the Deputy Clerk of the Supreme Court to Solicitor General Erwin Griswold (received from Department of Justice)..... 260

10. On March 30, 1971 Merriam and Thomas Casey, ITT Director of Corporate Planning, met with Peter Peterson, Assistant to the President for International Economic Affairs, to discuss a wide range of subjects including antitrust matters.

Page

10.1 Peter Peterson affidavit, April 29, 1974..... 268

10.2 Letter from William Merriam to Peter Peterson, April 7, 1971 (received from Peter Peterson)..... 271

11. At the request of Ehrlichman who said he spoke for the President, Peterson met with Geneen and Merriam on Friday, April 16, 1971. They discussed various subjects relating to economic policy, including overall antitrust policy related to bigness. At the end of the meeting, Geneen and Merriam discussed ITT's specific antitrust problems, including the fact that the deadline for the government to perfect the ITT-Grinnell appeal was the following Tuesday, April 20. After the meeting Peterson telephoned Ehrlichman and reported on the meeting including the discussion of the ITT-Grinnell appeal. Ehrlichman indicated to Peterson that action was under way to postpone the appeal. The following week Peterson reported to the President on the meeting and his subsequent telephone call to Ehrlichman.

Page

11.1 Peter Peterson affidavit, April 29, 1974 278

11.2 Memorandum from Peter Peterson to the President, April 23, 1971 (received from White House)..... 281

12. Also on April 16, 1971 Lawrence Walsh, a member of a law firm that had long represented ITT, telephoned Deputy Attorney General Kleindienst. Pursuant to that telephone conversation Walsh caused to be delivered to Kleindienst a letter and memorandum urging that before the Department of Justice decided to pursue the ITT-Grinnell appeal to the Supreme Court it should undertake a review by all interested federal agencies of the economic consequences of a Supreme Court decision favorable to the government. Copies of the Walsh letter and memorandum were delivered later that day to Peterson and Ehrlichman.

Page

12.1 Richard Kleindienst testimony, 2 KCH 250..... 284

12.2 Lawrence Walsh testimony, 3 KCH 1038-39..... 285

12.3 Letter from Lawrence Walsh to Richard Kleindienst, April 16, 1971 with attached memorandum of law (received from White House; reprinted at 2 KCH 265-68... 287

12.4 Memorandum from William Merriam to Peter Peterson, April 16, 1971 with attached letter (received from Peter Peterson)..... 304

12.5 Letter from William Merriam to John Ehrlichman, April 16, 1971 with attached letter and memorandum of law (received from White House)..... 305

13. On Monday morning, April 19, 1971 Kleindienst told Walsh by telephone that Kleindienst did not think the ITT-Grinnell appeal would be delayed. In a memorandum dated April 19, 1971 to Kleindienst, McLaren disputed the position taken by Walsh in his letter and memorandum of April 16 and urged that the ITT-Grinnell appeal not be delayed.

Page

13.1 Lawrence Walsh testimony, 3 KCH 1039..... 308

13.2 Memorandum from Richard McLaren to Richard Kleindienst, April 19, 1971 (received from Department of Justice).... 309

14. Beginning at 3:03 p.m. on the afternoon of April 19, 1971 the President met with Ehrlichman and George Shultz, Director of the Office of Management and Budget. The antitrust actions against ITT were among the subjects discussed. Ehrlichman said that the deadline for the ITT-Grinnell appeal was the following day and he reported that, despite his attempts to give the Justice Department "signals," the appeal was being pursued. The President then telephoned Kleindienst and ordered him to drop the appeal. After the telephone conversation the President expressed his concern that McLaren's actions with respect to conglomerates were contrary to the Administration's antitrust policy.

Page

14.1 Tape recording of conversation among the President, John Ehrlichman and George Shultz, April 19, 1971, 3:03 - 3:34 p.m., and House Judiciary Committee transcript thereof..... 312

14.2 Tape recording of telephone conversation between the President and Richard Kleindienst, April 19, 1971, 3:04 - 3:09 p.m., and House Judiciary Committee transcript thereof 346

15. After the President's telephone call Kleindienst met with McLaren and Solicitor General Erwin Griswold and directed that the Solicitor General apply to the Supreme Court for another extension of time. At 4:30 p.m. Kleindienst telephoned Walsh and informed him that the Solicitor General was arranging for an extension of time for the government to perfect its appeal.

Page

15.1 Richard Kleindienst testimony, 2 KCH 250..... 350

15.2 Richard McLaren testimony, 2 KCH 252..... 351

15.3 Erwin Griswold statement, 2 KCH 242-43..... 352

15.4 Erwin Griswold testimony, 2 KCH 373, 378-80..... 354

15.5 Lawrence Walsh testimony, 3 KCH 1039..... 358

16. On Tuesday, April 20, 1971, on the motion of Solicitor General Griswold, the time for the government to perfect its appeal in ITT-Grinnell by filing its jurisdictional statement was extended from April 20, 1971 to May 20, 1971.

Page

16.1 United States v. International Telephone and Telegraph Corporation, Application for Extension of Time filed by the Solicitor General and Order of the United States Supreme Court, April 20, 1971, with letter from the Deputy Clerk of the Supreme Court to Solicitor General Erwin Griswold (received from Department of Justice)..... 360

16.2 United States v. International Telephone and Telegraph Corporation, Supreme Court Docket, April 19-20, 1971..... 365

17. Also on April 20, 1971 Felix Rohatyn, an investment banker who was a director of ITT, met with Kleindienst to discuss the economic and financial ramifications of divestiture of the Hartford Fire Insurance Company by ITT. At the meeting Rohatyn asked to present these arguments to McLaren, and such a presentation was later arranged for April 29.

Page

17.1 Richard Kleindienst testimony, 2 KCH 96-97..... 368

17.2 Felix Rohatyn testimony, 2 KCH 114..... 370

18. On April 21, 1971 the President met with Attorney General Mitchell and discussed, among other things, the ITT-Grinnell appeal. The President said that he did not care about the merits of the case but that the business community believed that the Administration was being even rougher on it in antitrust matters than had previous administrations. Mitchell argued that it was a political mistake to interfere with the appeal. The President agreed to heed Mitchell's advice to permit the appeal to be perfected.

Page

18.1 Tape recording of the end of a meeting between the President and John Mitchell, April 21, 1971, 4:18 - 6:13 p.m., and House Judiciary Committee transcript thereof 372

19. During the last ten days of April 1971 Geneen and Merriam of ITT wrote four letters to Administration officials -- one to Secretary of the Treasury John Connally and three to Peter Peterson -- containing references to antitrust matters. Two of the letters commented favorably on the ITT-Grinnell appeal delay.

Page

19.1 Memorandum from William Merriam to Peter Peterson, April 22, 1971, with attached letter from Harold Geneen to Peter Peterson, April 22, 1971 (received from Peter Peterson)..... 378

19.2 Letter from William Merriam to John Connally, April 22, 1971 (received from White House)..... 386

19.3 Memorandum from Peter Peterson to John Ehrlichman Dick [sic] Krogh, April 27, 1971, with attached letter from William Merriam to Peter Peterson, April 26, 1971 (received from White House)..... 388

19.4 Memorandum from Peter Peterson to John Ehrlichman and Dick [sic] Krogh, May 3, 1971, with attached letter from William Merriam to Peter Peterson, April 30, 1971 (received from White House..... 391

20. On April 28, 1971 Ehrlichman wrote a memorandum to the President criticizing McLaren for failure to follow the Administration's antitrust policy, then under study by a Domestic Council Task Force, and recommending action to be taken. The President approved Ehrlichman's recommendations.

		Page
20.1	Memorandum from John Ehrlichman to the President, April 28, 1971 (received from White House).....	394
20.2	Memorandum from John Ehrlichman to Members of the Domestic Council, February 19, 1971 (received from Department of Justice).....	396
20.3	Memorandum from Egil Krogh to Richard McLaren, April 30, 1971 (received from White House).....	398
20.4	Memorandum from John Ehrlichman to John Connally, John Mitchell, George Shultz, Paul McCracken, Peter Peterson, and Peter Flanigan, September 14, 1971 (received from Department of Justice).....	401

21. On April 29, 1971 Rohatyn accompanied by four ITT representatives met with Kleindienst, McLaren and Antitrust Division and Treasury Department staff members. The ITT representatives presented ITT's position that there would be adverse economic and financial consequences if the divestiture of Hartford were required. Following the meeting McLaren caused these arguments to be submitted to the Treasury Department and to Richard Ramsden, an independent financial consultant who had previously rendered advice to the Antitrust Division.

Page

21.1 Richard Kleindienst testimony, 2 KCH 98..... 404

21.2 Richard McLaren testimony, 2 KCH 102-03..... 405

21.3 Felix Rohatyn testimony, 2 KCH 114-16..... 407

21.4 Richard Kleindienst notes of April 29, 1971 meeting (received from Department of Justice)..... 410

21.5 Letter from Felix Rohatyn to Richard McLaren, May 3, 1971 (received from Department of Justice)..... 419

22. Beginning in April 1971 Mitchell, Haldeman, Lawrence Higby, Gordon Strachan, William Timmons, Jeb Magruder and Robert Odle participated in the initial planning of the 1972 Republican National Convention and began to consider San Diego as a possible site. A memorandum from Higby to Strachan dated April 29, 1971 states that Haldeman discussed the possibility of a San Diego convention with California's Lt. Governor Ed Reinecke. The memorandum states that Reinecke would, as a result of his discussion with Haldeman, cause a proposal for San Diego to be the convention site to be made to the Republican National Committee.

Page

22.1 Memorandum from William Timmons to H. R. Haldeman, April 20, 1971 (received from White House)..... 425

22.2 Memorandum from Lawrence Higby to H. R. Haldeman, April 20, 1971 (received from White House)..... 426

22.3 Memorandum from Gordon Strachan to H. R. Haldeman, April 21, 1971 (received from White House)..... 427

22.4 Memorandum from Gordon Strachan to H. R. Haldeman, April 23, 1971 (received from White House)..... 428

22.5 Memorandum from Lawrence Higby to Gordon Strachan, April 29, 1971 (received from White House)..... 429

22.6 Memorandum from Gordon Strachan to H. R. Haldeman, May 11, 1971 with attached memorandum from William Timmons to H. R. Haldeman, May 6, 1971, and attached report (received from White House)..... 430

22.7 Memorandum from Robert Odle to Jeb Magruder, May 19, 1971 (received from White House)..... 448

22.8 Memorandum from Robert Odle to William Timmons, May 20, 1971 (received from White House)..... 454

22.9 Letter from Ed Reinecke to William Timmons, June 2, 1971 (received from White House)..... 455

Page

22.10 Memorandum from Robert Odle to Jeb Magruder, June 15, 1971 (received from White House)..... 456

22.11 Memorandum from Gordon Strachan to H. R. Haldeman, June 23, 1971 with attached memorandum from Robert Odle to Jeb Magruder, June 22, 1971, and attached memorandum from William Timmons to H. R. Haldeman, June 21, 1971 (received from White House)..... 458

22.12 Memorandum from Gordon Strachan to H. R. Haldeman, June 25, 1971 (received from White House)..... 464

22.13 Memorandum from Gordon Strachan to H. R. Haldeman, June 29, 1971, with attached memorandum from Jeb Magruder and William Timmons to John Mitchell and H. R. Haldeman, June 26, 1971, and attachments (received from White House)..... 465

23. In a memorandum dated May 5, 1971 Ehrlichman informed Mitchell that he desired to meet with McLaren about the ITT cases to achieve the agreed-upon ends discussed by the President and Mitchell.

Page

23.1 Memorandum from John Ehrlichman to John Mitchell, May 5, 1971 (received from White House)..... 526

24. On May 12, 1971 ITT President Geneen discussed with Congressman Bob Wilson, whose district included part of San Diego, the possibility of ITT financial support for a San Diego convention bid.

Page

24.1 Harold Geneen testimony, 2 KCH 647-48 528

24.2 Bob Wilson testimony, 3 KCH 866-67..... 530

25. On May 17, 1971 the government's appeal in ITT-Grinnell was perfected by the filing of a jurisdictional statement.

Page

25.1 United States v. International Telephone and Telegraph Corporation, Notice of Docketing of Appeal, United States Supreme Court, May 17, 1971 (received from Department of Justice)..... 534

26. By report dated May 17, 1971 Richard Ramsden reported his findings on the ITT position with respect to the financial ramifications of divestiture of Hartford.

Page

26.1 Ramsden Report, International Telephone and Telegraph Corporation, May 17, 1971, 2 KCH 103-10..... 538

26.2 Richard McLaren testimony, 2 KCH 103, 110..... 546

27. On June 17, 1971 McLaren recommended to Kleindienst that the ITT suits be settled. His proposed settlement included the requirement that ITT divest itself of Grinnell, Canteen, and certain other ITT subsidiaries, but permitted ITT to retain Hartford Fire Insurance Company. The basic terms of the settlement offer were put to ITT on a take it or leave it basis and were accepted. Details of the settlement were then negotiated among ITT and Antitrust Division lawyers.

		Page
27.1	Memorandum from Richard McLaren to Richard Kleindienst, June 17, 1971 (received from Department of Justice).....	550
27.2	Richard McLaren testimony, 2 KCH 110-13.....	553
27.3	Felix Rohatyn testimony, 2 KCH 115.....	557
27.4	Richard Kleindienst testimony, 2 KCH 98-99	558

28. San Diego's convention bid was authorized by the San Diego City Council on June 29, 1971. On July 21, 1971 ITT-Sheraton's President, Howard James, confirmed by telegram his company's commitment to the San Diego Convention and Tourist Bureau of $100,000 for convention-related expenses plus an additional $100,000 if and when $200,000 was raised by the Bureau from other non-public sources. The pledge was subject to the condition that the Sheraton Harbor Island Hotel, then under construction, be used as Presidential convention headquarters. The decision for San Diego to be the convention site was made within the Administration and transmitted to the Republican National Committee. On July 23, 1971 the Republican National Committee selected San Diego as the 1972 convention site.

		Page
28.1	San Diego City Council resolution, June 29, 1971 (received from San Diego City Council).....	563
28.2	Memorandum from Jeb Magruder to John Mitchell, June 30, 1971 (received from White House).....	568
28.3	Memorandum from Herbert Klein to H. R. Haldeman, June 30, 1971 (received from White House).....	569
28.4	Memorandum from William Timmons to Jeb Magruder, July 3, 1971 (received from White House).....	574
28.5	Memorandum from Herbert Klein to the President, July 19, 1971 (received from White House).....	575
28.6	Memorandum from William Timmons to the President, July 19, 1971 (received from White House).....	576
28.7	Memorandum from Jo Good to Robert Dole, July 19, 1971 (received from White House).....	578

Page

28.8 Memorandum from Jeb Magruder to John Mitchell, July 28, 1971 with attached memorandum from Robert Odle to Jeb Magruder, July 27, 1971 (received from White House)..... 582

28.9 Telegram from Howard James to Bob Wilson, July 21, 1971, 2 KCH 678-79..... 588

28.10 Harold Geneen testimony, 2 KCH 648-49..... 590

28.11 Resolution on Selection of the Site for the 1972 Republican National Convention, July 23, 1971..... 592

29. On July 31, 1971, after ITT and Antitrust Division lawyers had negotiated details of the settlement of the ITT litigation, the settlement was announced.

Page

29.1 Richard McLaren testimony, 2 KCH 110-14..... 596

29.2 Felix Rohatyn testimony, 2 KCH 115..... 601

29.3 Richard Kleindienst testimony, 2 KCH 99..... 602

30. A Sheraton Harbor Island Corporation check for $100,000 dated August 5, 1971 and representing the non-contingent portion of ITT's pledge was delivered to the San Diego Convention and Tourist Bureau.

Page

30.1 Photograph of check from Sheraton Harbor Island Corporation to the San Diego Convention and Tourist Bureau printed in Washington Post, March 16, 1972, A13..... 604

31. On February 15, 1972 the President nominated Richard G. Kleindienst to be Attorney General to succeed John Mitchell who was leaving the Department of Justice and who later became Campaign Director of the Committee for the Re-election of the President. The Senate Committee on the Judiciary held hearings on the nomination and recommendation on February 24, 1972 that the nomination be confirmed.

Page

31.1 Announcement of President's Intention to Nominate Richard Kleindienst to be Attorney General, 8 Presidential Documents 440, 448..... 606

31.2 Letter from President Nixon to John Mitchell, February 15, 1972, 8 Presidential Documents 439..... 608

31.3 S. Exec. Rept. 92-19, Nomination of Richard Kleindienst, 92d Cong., 2d Sess. (1972)..... 609

31.4 Chicago Tribune, February 25, 1972, Section 2A, 1..... 612

32. On February 22, 1972 columnist Jack Anderson obtained from an ITT source a memorandum dated June 25, 1971 purportedly written by ITT lobbyist Dita Beard addressed to ITT Vice President Merriam regarding the ITT-Sheraton convention pledge and settlement of the ITT antitrust cases. Anderson's investigative reporters contacted first Dita Beard to discuss and confirm the memorandum's validity and then ITT and Administration officials to discuss and attempt to confirm the events reported in the memorandum. On February 24, 1972 ITT personnel destroyed documents in the Washington office files.

Page

32.1 Purported memorandum from Dita Beard to William Merriam, June 25, 1971, (received from White House) reprinted in 2 KCH 447-48..... 614

32.2 Jack Anderson testimony, 2 KCH 449..... 618

32.3 Brit Hume testimony, 2 KCH 408-14 619

32.4 Felix Rohatyn testimony, 2 KCH 115-16 626

32.5 Washington Post, March 3, 1972, D15 628

32.6 Howard Aibel testimony, 2 KCH 704-05 629

41-581 O - 74 - 4

33. In a February 28, 1972 Department of Justice press release Mitchell said he had met Dita Beard only once, at a party given by Governor Louis Nunn of Kentucky in May 1971. Mitchell denied allegations that he had discussed the ITT antitrust cases with her. He also denied in the press release that he had discussed the ITT matter with the President.

Page

33.1 John Mitchell statement, Department of Justice press release, February 28, 1972 (received from Department of Justice)..... 632

34. On February 29, March 1 and March 3, 1972 there were published three columns by Jack Anderson based in part on the Beard memorandum. The articles alleged a connection between the ITT-Sheraton pledge and the ITT antitrust settlement and purported to involve both Mitchell and Kleindienst. As a result of the publication of the first two articles Kleindienst asked that his confirmation hearings be reopened.

Page

34.1 Washington Post, February 29, March 1, March 3, 1972 634

34.2 Washington Post, March 1, 1972, A1 637

35. On March 1, 1972 during his final press conference as Attorney General, Mitchell again denied talking to the President about ITT or any other antitrust case.

Page

35.1 John Mitchell press conference, March 1, 1972, 1-2 (received from SSC)..... 640

36. On or about March 1, 1972 a member of the staff of the SEC demanded that ITT produce documents in the files of ITT's Washington, D. C. office. The SEC staff member contended that production of the documents was called for by subpoenas previously issued in connection with SEC proceedings. Attorneys for ITT collected documents believed to be included in the SEC demand.

Page

36.1 Michael Mitchell affidavit submitted to House Judiciary Committee, May 1, 1974, with attachments..... 646

37. On Thursday March 2, 1972 pursuant to Kleindienst's request the confirmation hearings resumed and Kleindienst, testifying under oath, denied talking other than casually to the White House and White House staff about the ITT matter. He denied receiving any suggestions from the White House as to the action that the Justice Department should take in the ITT cases.

Page

37.1 Richard Kleindienst testimony, 2 KCH 95-96, 157..... 678

38. On the same day an ITT attorney delivered copies of one or more of the documents collected by ITT attorneys from ITT's Washington office files to White House aide Wallace H. Johnson. The document or documents were then conveyed by Johnson to John Mitchell. During the following week copies of other documents taken from the ITT Washington office which mentioned the ITT antitrust suits and contacts between ITT and administration officials were delivered by ITT attorneys to Johnson.

		Page
38.1	Michael Mitchell affidavit, submitted to House Judiciary Committee, May 1, 1974, with attachments	682
38.2	Wallace Johnson affidavit, April 25, 1974	713
38.3	John Mitchell log, March 2, 1972 (received from SSC)	717

39. On the evening of March 2, 1972 Dita Beard, having spent two days at the ITT offices in New York City, left Washington by airplane for Denver, Colorado en route to West Yellowstone, Montana. During the flight she became ill and on the evening of March 3, 1972 she was admitted to a Denver hospital.

		Page
39.1	Dita Beard statement, 2 KCH 741-42.....	720
39.2	Edward Gerrity testimony, 3 KCH 1167.....	722
39.3	United Air Lines passenger ticket, issued to D. Beard for Flight #175, March 2, 1972 (received from United Air Lines).....	723
39.4	Stewardess report on passenger illness of Mrs. Beard, occuring on Flight # 175, March 2, 1972 (received from United Air Lines).....	724
39.5	Letter from J. Edgar Hoover to Chairman James O. Eastland, March 5, 1972, 2 KCH 213.....	725
39.6	Medical Report by Dr. Joseph Snyder, March 13, 1972, 2 KCH 637-39.....	726

40. On Friday, March 3, 1972 Kleindienst, in his testimony before the Senate Committee on the Judiciary, denied consulting with, reporting to, or getting directions from anybody at the White House about the ITT antitrust cases. He also testified that he did not recall why on April 19, 1971 the Department of Justice requested a delay in the appeal of the ITT-Grinnell case to the Supreme Court.

Page

40.1 Richard Kleindienst testimony, 2 KCH 95, 181, 191, 203-04..... 730

41. On the afternoon of Sunday, March 5, 1972, the President and Haldeman returned to Washington, D. C. from Key Biscayne. On Monday, March 6, 1972 the President had conversations with Haldeman, Ehrlichman and Colson. At about 1:30 p.m., shortly after leaving the President's office, Ehrlichman met with SEC Chairman Casey.

		Page
41.1	John Ehrlichman log, March 6, 1972 (received from SSC)	736
41.2	Meetings and conversations between the President and John Ehrlichman, March 6, 1972 (received from White House)	737
41.3	Meetings and conversations between the President and H. R. Haldeman, March 1, March 5 and March 6, 1972 (received from White House)	739
41.4	Meetings and conversations between the President and Charles Colson, March 6, 1972 (received from White House)	741
41.5	John Ehrlichman log, March 21, 1972 (received from SSC)	742
41.6	William Casey testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Agency Independence and the ITT Case, June 27, 1973, 261-64, 309-10	743
41.7	William Casey calendar, March 6, 1972 (received from U.S. Attorney, Southern District of New York)	749

42. On Tuesday, March 7, 1972 in a prepared statement given under oath before the Senate Committee on the Judiciary, Kleindienst described the circumstances surrounding the request for an extension of time to appeal ITT-Grinnell. He omitted mention of the President's order to drop the case made during their telephone conversation of April 19, 1971.

Page

42.1 Richard Kleindienst testimony, 2 KCH 95, 249-50..... 752

43. On March 8, 1972 Kleindienst testified before the Senate Committee on the Judiciary and denied again that he was interfered with, pressured, importuned or directed by anybody at the White House in connection with the discharge of his responsibilities in the ITT cases.

Page

43.1 Richard Kleindienst testimony, 2 KCH 95, 323, 353..... 756

44. In early March 1972 a White House task force, consisting of Ehrlichman, Colson, Moore, Dean, Fielding, Johnson, Assistant Attorney General Robert C. Mardian and others, was established to follow the Kleindienst hearings; its activities continued throughout the month. Fielding was given the responsibility of reviewing White House files and collecting all documents relating to ITT, which he proceeded to do.

Page

44.1 Charles Colson testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Agency Independence and the ITT Case, 218..... 760

44.2 Richard Moore testimony, 5 SSC 1947-48..... 761

44.3 Wallace Johnson affidavit, April 25, 1974..... 763

44.4 Robert Mardian testimony, 6 SSC 2348..... 767

44.5 John Dean testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Agency Independence and the ITT Case, 66, 68..... 768

45. On March 14, 1972 John Mitchell appeared before the Senate Committee on the Judiciary and twice denied under oath that he talked to the President about the ITT antitrust litigation or any antitrust litigation. On the evening of March 14, 1972 the President and Mitchell had a telephone conversation which, according to Mitchell's logs, was their only telephone conversation during the month.

Page

45.1 John Mitchell testimony, 2 KCH 539, 552, 571..... 772

45.2 John Mitchell log, March 14, 1972 (received from SSC)..... 775

46. On March 15, 1972 E. Howard Hunt met with Colson, Johnson and Timmons. It was determined that Hunt should interview Mrs. Beard respecting the authenticity of the purported Beard memorandum. Hunt flew to Denver and interviewed Mrs. Beard in her hospital room. On March 17, after his return to Washington, he prepared a detailed summary of the interview.

Page

46.1 Charles Colson calendar, March 15, 1972 (received from SSC)... 778

46.2 E. Howard Hunt testimony, 9 SSC 3734-35, 3752-53..... 780

46.3 Charles Colson testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Agency Independence and the ITT Case, 201-03..... 784

46.4 Memorandum regarding Dita Beard, March 17, 1972 (received from White House)..... 787

47. "ITT" is written on Colson's calendar for the morning of March 18, 1972. Colson had three telephone conversations with Mitchell during the morning. That afternoon the President and Colson met for more than two hours.

Page

47.1 Charles Colson calendar, March 18, 1972 (received from SSC)..... 796

47.2 John Mitchell log, March 18, 1972 (received from SSC)..... 797

47.3 Meetings and conversations between the President and Charles Colson, March 18, 1972 (received from White House) 798

48. On March 24, 1972 the President held his only news conference during the period of the Kleindienst nomination hearings. He stated that nothing had happened in the Senate hearings that shook his confidence in Kleindienst as an able, honest man fully qualified to be Attorney General. He also praised the actions of Richard McLaren, and the administration, in having moved effectively to stop the growth of ITT.

Page

48.1 President Nixon news conference, March 24, 1972, 8 Presidential Documents 673-75..... 800

49. On the morning of March 30, 1972 Colson, Haldeman and MacGregor met. That afternoon Colson sent a memorandum to Haldeman stating that certain factors should be taken into account in determining whether to continue to support, or to withdraw, Kleindienst's nomination, including the possibility that documents would be revealed tending to show that the President was involved in the ITT situation in 1971 and contradicting statements made by Mitchell under oath during the hearings. Haldeman and Colson each had several conversations with the President on that day.

Page

49.1 Memorandum from Charles Colson to H. R. Haldeman, March 30, 1972, SSC Exhibit No. 121, 8 SSC 3372-76 805

49.2 Letter from William Merriam to John Connally, April 22, 1971 (received from White House) 810

49.3 Letter from William Merriam to Peter Peterson, April 30, 1971 (received from White House) 812

49.4 Letter from "Ned" [Edward Gerrity] to Vice President Spiro Agnew, August 7, 1970, with attached memorandum (received from House Interstate and Foreign Commerce Committee)..... 813

49.5 Memorandum from John Ryan to William Merriam, August 24, 1970, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Legislative Oversight of SEC: Agency Independence and the ITT Case, 154-56, and partial handwritten copy of memorandum (received from White House) 816

49.6 Memorandum from Herbert Klein to H. R. Haldeman, June 30, 1971 (received from White House)..... 820

49.7 Memorandum from Richard Kleindienst and Richard McLaren to John Ehrlichman, April 23, 1969 (received from White House)..... 821

49.8 Memorandum from Tod Hullin to Richard McLaren, August 10, 1970 (received from White House)..... 827

49.9 Memorandum from John Ehrlichman to John Mitchell, September 17, 1970 (received from White House)..... 828

Page

49.10 Memorandum from John Ehrlichman to John Mitchell, May 5, 1971 (received from White House) 829

49.11 Memoranda from John Ehrlichman to the President, April 28, 1971 and May 3, 1971 (received from White House) 830

49.12 H. R. Haldeman testimony, 8 SSC 3216, 3218-19 834

49.13 H. R. Haldeman calendar, March 30, 1972 (received from SSC) 837

49.14 Meetings and conversations between the President and H. R. Haldeman, March 30, 1972 (received from White House) 838

49.15 Meetings and conversations between the President and Charles Colson, March 30, 1972 (received from White House) 839

50. On April 4, 1972 Mitchell returned to his office after about two weeks in Florida. That afternoon he met with the President and Haldeman at the White House. According to Haldeman's testimony before the Senate Select Committee on Presidential Campaign Activities, his notes taken during the meeting indicate that the Kleindienst hearings were discussed.

Page

50.1 John Mitchell log, March 21 - April 4, 1972 (received from SSC)..... 842

50.2 Meetings and conversations between the President and H. R. Haldeman, April 4, 1972 (received from White House)..... 845

50.3 H. R. Haldeman testimony, 7 SSC 2866, 2881..... 846

51. On April 27, 1972, the final day of the Kleindienst confirmation hearings, Kleindienst, referring to his earlier testimony about communications with persons at the White House, testified that if someone had called him to instruct him on the handling of the ITT case, he would remember such a call. Kleindienst said that no such conversation occurred.

Page

51.1 Richard Kleindienst testimony, 2 KCH 95, 3 KCH 1673, 1682..... 850

51.2 Richard Kleindienst statement, October 31, 1973, reprinted in New York Times, November 1, 1973, 33..... 853

52. The press provided extensive news coverage and frequent editorial commentary on the Kleindienst confirmation hearings. John Mitchell's denials that he discussed the ITT cases with President Nixon were reported. Richard Kleindienst's descriptions of his role in the ITT-Grinnell appeal and settlement were also reported; these descriptions omitted reference to the President's order that the appeal be dropped.

Page

52.1 Newspaper articles from The New York Times and The Washington Post, February 25 - June 28, 1972, regarding hearings on the Nomination of Richard Kleindienst to be Attorney General..... 856

52.2 The Washington Post, March 10, 1972, A-1, A-12..... 857

52.3 The New York Times, March 15, 1972, 1, 34..... 858

52.4 The Washington Post, April 27, 1972, A-1, A-7..... 859

52.5 The Washington Post, April 28, 1972, A-1, A-6..... 860

53. By letter dated April 25, 1972 from Senator Eastland, Chairman of the Senate Committee on the Judiciary, to SEC Chairman William Casey, Senator Eastland requested access to ITT documents in the possession of the SEC. This request was denied by Chairman Casey. If Chairman Casey had complied with the Senate Judiciary Committee's request the SEC would have supplied the Committee with, among other things, the following documents not obtained by the Committee during the course of the Kleindienst hearings:

1. Letter dated April 22, 1971 from Harold Geneed to Peter Peterson concerning their April 16, 1971 meeting with memorandum on antitrust policy attached.

2. Letter dated April 22, 1971 from William Merriam to John Connally referring to the ITT antitrust litigation.

3. Letter dated April 26, 1971 from William Merriam to Peter Peterson referring to planned antitrust legislation.

4. Letter dated April 30, 1971 from William Merriam to Peter Peterson referring to Solicitor General Griswold's request for an extension of time to perfect the ITT-Grinnell appeal.

5. Letter dated August 7, 1970 from Thomas Casey of ITT to Charles Colson discussing the pending ITT antitrust litigation.

6. Letter dated August 7, 1970 from "Ned" [Edward Gerrity] to Vice President Spiro Agnew with memorandum about ITT antitrust litigation attached.

7. ITT inter-corporate memorandum dated August 10, 1970 from Edward Gerrity to John Ryan discussing, among other things, Richard McLaren and the Administration's merger policy.

8. ITT inter-corporate memorandum dated August 24, 1970 from William Merriam to John Ryan discussing, among other things, the ITT antitrust litigation, Richard McLaren and contacts with the Administration.

Page

53.1 Letter from Senators Kennedy, Bayh, Hart, Burdick and Tunney to Chairman James Eastland, April 19, 1972, 3 KCH 1664..... 865

53.2 Letter from William Casey to Chairman James Eastland, April 26, 1972, 3 KCH 1664..... 866

53.3 Letter from Edward Kennedy to Chairman Harley Staggers, December 13, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 28-29..... 867

53.4 Michael Mitchell affidavit, submitted to House Judiciary Committee, May 1, 1974, with attachments..... 869

54. On June 8, 1972 the Senate confirmed Kleindienst's nomination.

On June 12, 1972 he became Attorney General.

Page

54.1 Congressional Record, June 8, 1972, S9114-15..... 902

54.2 President Nixon remarks at swearing-in ceremonies for Richard Kleindienst as Attorney General, June 12, 1972, 8 Presidential Documents 1024..... 904

55. On three occasions in September 1972 Congressman Harley Staggers, Chairman of the House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, requested from SEC Chairman William Casey access to material received from ITT by the SEC in connection with the SEC's investigation of ITT. Chairman Casey discussed Chairman Staggers' request with Mitchell, Dean and Colson. By letters to Chairman Staggers, Chairman Casey refused the requests. The ITT material was transferred by the SEC to the Department of Justice on October 6, 1972. In addition, an envelope containing other documents obtained from ITT which reflected contacts in 1970 and 1971 between representatives of ITT and Administration officials was delivered separately by the SEC to the office of Deputy Attorney General Erickson.

Page

55.1 Letter from Chairman Harley Staggers to William Casey, September 21, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 5..... 907

55.2 Chairman Harley Staggers statement, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 23..... 908

55.3 Letter from Chairman Harley Staggers to William Casey, September 28, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 6-8..... 909

55.4 William Casey testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Agency Independence and the ITT Case, 230, 235, 241, 250-51, 260-62..... 922

Page

55.5 Letter from William Casey to Chairman Harley Staggers, September 26, 1973, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 5-6..... 920

55.6 Letter from William Casey to Chairman Harley Staggers, October 6, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 8-9..... 922

55.7 Letter from William Casey to Ralph Erickson, October 5, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 135-36..... 924

55.8 Charles Mallory testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 86-89..... 928

55.9 Ralph Erickson testimony, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Agency Independence and the ITT Case, 128-30, 149-64..... 930

56. In a letter dated October 17, 1972 Chairman Staggers requested from Deputy Attorney General Erickson access to the ITT materials referred to the Department of Justice by the SEC. Erickson denied the request on the grounds that disclosure might prejudice any future criminal proceedings.

Page

56.1 Letter from Chairman Harley Staggers to Ralph Erickson, October 17, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry Into Withholding and Transfer of Agency Files Pertaining to ITT, 9-10..... 950

56.2 Letter from Ralph Erickson to Chairman Harley Staggers, October 26, 1972, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry Into Withholding and Transfer of Agency Files Pertaining to ITT, 10-11..... 952

57. On January 8, 1974 the Office of the White House Press Secretary issued a "White Paper" entitled, "The ITT Anti-Trust Decision," describing the President's role in the ITT antitrust cases and their settlement.

Page

57.1 White House "White Paper", The ITT Anti-Trust Decision, January 8, 1974..... 956

58. On May 16, 1974, Richard Kleindienst pleaded guilty to one count of refusing or failing fully to respond to questions propounded to him by the Senate Committee on the Judiciary on March 2, 3, 7, and 8 and April 27, 1972.

Page

58.1 United States v. Kleindienst information, May 16, 1974, with attached Watergate Special Prosecution Force press release..... 966

58.2 Letter from Leon Jaworski to Herbert J. Miller, May 10, 1974 (received from Watergate Special Prosecution Force)..... 969

STATEMENT OF INFORMATION

AND

SUPPORTING EVIDENCE

DEPARTMENT OF JUSTICE / ITT LITIGATION -

RICHARD KLEINDIENST NOMINATION HEARINGS

Part 1

1. By memorandum dated April 23, 1969 from Deputy Attorney General Richard Kleindienst, acting as Attorney General*, and Assistant Attorney General Richard McLaren, head of the Antitrust Division, to John Ehrlichman, Counsel to the President, Kleindienst and McLaren urged approval of the commencement of an antitrust action against the International Telephone and Telegraph Corporation (ITT) challenging its acquisition of Canteen Corporation. Commencement of the suit was approved and on April 28, 1969 the suit was begun in the United States District Court for the Northern District of Illinois.

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*Because Attorney General John Mitchell's former law firm had represented an ITT subsidiary, Mitchell recused himself and Deputy Attorney General Kleindienst acted as Attorney General in connection with the litigation.

		Page
1.1	Memorandum from Richard Kleindienst and Richard McLaren to John Ehrlichman, April 23, 1969 with attached draft complaint (received from White House).....	70
1.2	Memorandum from Richard McLaren to Richard Kleindienst, April 25, 1969, 3 Kleindienst Confirmation Hearings (KCH) 1237.....	88
1.3	United States v. International Telephone and Telegraph Corporation, Civ. No. 69c-924, Docket, 1-2....	89
1.4	Richard Kleindienst testimony, 2 KCH 96.....	91
1.5	John Mitchell testimony, 2 KCH 539-40.....	92
1.6	Memorandum from Richard McLaren for the Attorney General, April 7, 1969 (received from Department of Justice).....	94

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

April 23, 1969

101503

MEMORANDUM FOR:

Honorable John Ehrlichman
Counsel to the President
The White House

Re: ITT-Canteen Merger

In accordance with telephone conversation this morning, enclosed is a Memorandum for the Attorney General dated April 7, 1969, and a draft of proposed complaint to be filed under Section 7 of the Clayton Act in opposition to the ITT-Canteen merger. As you will note, the theory of the complaint is that this merger would adversely affect competition in the vending and inplant feeding business in the United States by reason of the vertical and reciprocity effects potentially resulting therefrom.

Active reciprocity, as you probably know, involves the use, normally by a diversified firm, of its purchasing power to assist its sales efforts. Reciprocity tends to exclude small and undiversified firms from the market. It is generally recognized that active reciprocity by a firm of significant size involves a violation of the Sherman Act (see Flynn, "Reciprocity and Related Topics Under the Sherman Act", 37 ABA Antitrust Law Journal, 156-168, 178-182 (1968)).

The Supreme Court has also stated: "Reciprocity in trading as a result of an acquisition violates Section 7 if the probability of a lessening of competition is shown" FTC v. Consolidated Foods Corp., 380 U.S. 592, 595 (1965). In Consolidated Foods, the case was tried after the merger

WH 101505

had taken place and the Court found that there had been seven instances of affirmative use by the acquiring company to make sales on the basis of a reciprocity pitch. The next question is whether we must wait for completion of a merger involving substantial reciprocity power and opportunity until after the merger is consummated. The court in United States v. Ingersoll Rand Co., 218 F. Supp. 530, 552; affirmed 320 F. 2d 509, pointed out "the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages in securing the goodwill of the possessor." In other words, where the large diversified company makes substantial purchases from many suppliers, these suppliers are going to feel a "reciprocity effect" even without affirmative use of reciprocity by the purchaser.

It has been our position (contrary to that taken by the prior Administration) that conglomerate mergers involving very large firms violate Section 7 of the Clayton Act where (1) significant potential horizontal competition is eliminated; (2) the merger will create reciprocity power which will substantially lessen competition in lines of commerce occupied by either the acquired or the acquiring firm; and (3) where economic concentration and the triggering of further mergers may be anticipated, with effects condemned by Congress when it amended Section 7 of the Clayton Act in 1950.

In the instant case, our interpretation of Section 7 of the Clayton Act is nevertheless consistent with the somewhat narrower interpretation of Section 7 of the Clayton Act held by the prior Administration. Under the Justice Department "Guidelines" issued in May 1968, a rule was set out condemning mergers which create the

WH 10150

danger of reciprocal buying (paragraph 19(a)). This guideline is set forth in full in the margin. 1/ For present purposes, Canteen is "the selling firm" and ITT is the "buying firm". None of Canteen's competitors is affiliated with an industrial purchaser of anything approaching the size of ITT. We estimate that ITT makes purchases from suppliers accounting for approximately 1/3 of the industrial work force in the nation. Thus these suppliers, employing 1/3 of the work force, certainly account for more than 15% of inplant feeding. The second half of the guideline is satisfied by the fact that ITT would be "both a substantial supplier [of industrial products] and a more substantial buyer than all or most of the competitors of" Canteen. We know of no "special market factor" that makes remote the possibility that reciprocal buying behavior will actually occur.

1/ (a) Since reciprocal buying (i.e., favoring one's customer when making purchases of a product which is sold by the customer) is an economically unjustified business practice which confers a competitive advantage on the favored firm unrelated to the merits of its product, the Department will ordinarily challenge any merger which creates a significant danger of reciprocal buying. Unless it clearly appears that some special market factor makes remote the possibility that reciprocal buying behavior will actually occur, the Department considers that a significant danger of reciprocal buying is present whenever approximately 15% or more of the total purchases in a market in which one of the merging firms ("the selling firm") sells are accounted for by firms which also make substantial sales in markets where the other merging firm ("the buying firm") is both a substantial buyer and a more substantial buyer than all or most of the competitors of the selling firm.

WH

101505

ITT's argument is that it would not engage in active reciprocity; that reciprocity is unlikely in the vending and inplant feeding industries because service is an important element and employees have a substantial voice in the selection of the supplier; and that ITT's purchases from industrial suppliers are a small percentage of the total sales of those suppliers and therefore would not be influential in swinging their vending or inplant feeding purchasing.

The answers to these arguments are as follows. First, the fact that ITT might not aggressively use reciprocity will not eliminate the reciprocity effect, which could influence up to 30% of the business, and even a 6% foreclosure would be an adverse effect condemned by the statute; notwithstanding the service nature of the business and employee voice in selection, we have evidence that reciprocity does play a part in the inplant feeding business; finally, even though ITT as a buyer may account for a small proportion of the sales of a large firm, all other things being equal (price, service, etc.), even $100,000 worth of business per year is a matter of significance and clearly could give Canteen a decisive advantage over competitors who do not have affiliation with a large diversified firm such as ITT. 2/

2/ A survey by Purchasing Magazine reveals that reciprocity influences purchasing decisions in large companies (over $50 million) far more frequently than in smaller companies. Chemical Week Magazine, in a similar study, also noted that chemical purchasing agents encounter reciprocity pressures only in dealing with large accounts.

101505

We should add that, in connection with a specific investigation of reciprocity practices, we have found that reciprocity is particularly widespread, for example, in the steel industry, and that where one important member of an industry begins to use reciprocity, other members are virtually forced to follow suit.

In conclusion, we would like to make clear that the opportunity for the operation of reciprocity has been a substantial basis for antitrust challenges to "conglomerate" mergers under Section 7 in at least five cases. One of these--the FTC's case against Consolidated Foods--was decided in favor of the Commission by the Supreme Court. Two others--the Department's suits against acquisitions by General Dynamics and Ingersoll Rand--were decided in the Government's favor by the district courts and did not reach the Supreme Court. A fourth case--a suit by the Department against Penick & Ford—is now pending in the district court--while the fifth--the Department's suit against the acquisition of Jones & Laughlin Steel by LTV--was recently filed by the Department. Moreover, the Department's policy of challenging mergers on this basis has been clearly conveyed to the business community in the previous Administration's Merger Guidelines and is well recognized by business and the antitrust bar. We believe that the proposed case against the ITT-Canteen acquisition is squarely within this line of cases.

We find that the Justice Department's action in proceeding against mergers among the very largest companies has been very favorably received by business as well as by Congress and the public at large. We are very concerned that reduced activity along this line will ultimately result in unduly restrictive legislation, and perhaps a Public Utility Holding Company Act "death sentence" provision to undo the concentration which will result from a continuation of the present trend.

101505

Vigorous enforcement of the antitrust laws, including preservation of small and medium-sized business and prevention of undue concentration, is traditional Republican doctrine. Our Section 7 policy is designed to implement that doctrine, and to avoid the dangers to the economy posed by the current big-company merger movement, as outlined in Mr. McLaren's testimony before the House Ways and Means Committee on March 12, 1969 (copy attached, see pages 10-22). We understand that the Council of Economic Advisers fully supports our Section 7 policy and would strongly favor its continuance.

Accordingly, we urge that the proposed suit against the ITT-Canteen merger be approved, and that we be authorized to negotiate with ITT a "standstill agreement" which would permit the merger to be completed, but would preserve the identity of Canteen, assure a prompt trial, and provide for divestiture in the event that a violation of Section 7 is found.

RICHARD G. KLEINDIENST
Deputy Attorney General

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS 101507

EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and CANTEEN CORPORATION, Defendants.	Civil Action No. Filed:

COMPLAINT

The United States of America, plaintiff, by its attorneys, brings this civil action against the above named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of that Act.

101507

2. The defendants, International Telephone and Telegraph Corporation and Canteen Corporation, transact business and may be found within the Northern District of Illinois, Eastern Division.

II

DEFENDANTS

3. International Telephone and Telegraph Corporation is made a defendant herein. International Telephone and Telegraph Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 320 Park Avenue, New York, New York. It and all companies controlled by it are hereinafter referred to as "ITT." ITT ranks among the 12 largest industrial concerns in the United States. The 1967 revenues of International Telephone and Telegraph Corporation and all companies controlled by it at the end of 1968 were $3.578 billion. ITT engages in substantial interstate and foreign commerce in a wide variety of business activities throughout the United States and in many foreign countries including international telecommunications, the operation of overseas telephone companies and various manufacturing and service businesses. ITT's domestic divisions and subsidiaries include Continental Baking Company, the largest baking company in the United States; Sheraton Corporation of America, one of the two largest hotel chains in the United States; Levitt & Sons, Inc., one of the largest residential construction firms in the United States; Avis, Inc., the second

WH 101507

largest car-rental firm in the United States; and Rayonier, Inc., a leading producer of chemical cellulose.

4. ITT is growing extremely rapidly. In the period 1955 through 1968, its total sales increased from $502,760,050 to approximately $3,578,000,000 (1967 sales of ITT including the companies it acquired in 1968). Much of ITT's recent growth has resulted from some 35 mergers and acquisitions which it made during the period 1960 through 1968. In 1968 alone ITT acquired Continental Baking, Sheraton, Levitt, and Rayonier, whose total combined 1967 revenues were $1,157,980,552 when acquired. Continental Baking and Rayonier were among the country's 500 largest industrial corporations. At the present time, ITT has approximately 109,000 employees in the United States employed at numerous industrial plants, laboratories, and other locations.

5. Canteen Corporation, hereinafter referred to as "Canteen," is named a defendant herein. Canteen is a corporation organized and existing under laws of the State of Delaware, with its principal place of business at the Merchandise Mart, Chicago, Illinois. Canteen's Rowe Cigarette Division operates cigarette machines in restaurants and other public places throughout the United States. Canteen's Food and Vending Service Division operates vending machines

101507

located in industrial plants, business offices, and other locations. This Division also provides manual food services for industrial and business firms. Canteen's Hospital Host and Campus Host services provide specialized food service to hospitals and to schools, respectively. Canteen also manages restaurants (Nationwide Restaurant Management) and concessions at sports facilities (Nationwide Concessions Divisions). Canteen engages in substantial interstate commerce in vending and food services. With operations in some 43 states, Canteen and its franchised distributors constitute one of the few nationwide vending organizations. Canteen's 1968 revenues were $322,202,000.

III

DEFINITIONS

6. The term "vending," as used herein, means the business of retailing food and related items through coin-operated vending machines. The items sold by the vending industry include cigarettes, cigars, confections, soft drinks, coffee, ice cream, milk, hot canned foods, and prepared foods such as sandwiches and casseroles.

7. The term "full-line vending," as used herein, means the business of vending a wide variety of food and



through vending machines. Full-line venders have the capability to provide complete meals at a single location.

8. The term "manual food service," as used herein, means the business of providing meals and related food items through such facilities as executive dining rooms, employee cafeterias, and snack bars.

IV

101507

TRADE AND COMMERCE

9. Vending operators, by contract or informal agreement, locate their machines in various places and locations controlled by others. Usually, venders pay commissions based on sales for the right to so locate their machines. In 1967, approximately 34% of vending sales were at public locations, 32% at plants and factories, 11% at schools and colleges, 8% at offices, and 13% at other locations. In 1967, retail vending sales were approximately $4.5 billion.

10. There are approximately 6,200 operators in the domestic vending industry. They range in size from one-man operations to nationwide companies such as Canteen. The smallest operators generally specialize in one or two vended products, principally cigarettes. The primary market for

such venders, sometimes called "street venders," is the public location such as a restaurant or tavern. Most venders offer a broader selection of vended products and for these more diversified venders such locations as industrial plants, offices, and schools are also important.

11. Somewhat less than half of all venders have the capability to serve a full meal through vending machines, and thereby provide full-line vending. Approximately one-third of such full-line venders also provide manual food services. For full-line venders, industrial plants are a very important market.

101507

12. Many industrial plants, in addition to requiring vending machines which provide snacks, refreshments, and cigarettes, also require in-plant facilities to feed their employees on the job and contract with outside firms to provide such service. Such in-plant feeding can be provided by full-line vending, by manual food service, or by a combination of both. While the exact size of this service is not presently known, it is clear that retail sales in this area exceed one billion dollars. It is estimated that Canteen and its largest competitor each account for over 10% of this in-plant feeding business.

101507

13. The few large nationwide food and vending companies such as Canteen possess substantial advantages over their smaller competitors. Many industrial locations, principally larger ones, require both vending and manual food service. While it is possible for a vender who has no manual food service, or a manual food service operator who has no vending, to compete for portions of such business, industrial plants often prefer to contract with one operator to provide all of such services. In addition, industrial firms with locations in various parts of the United States often prefer to contract with one nationwide firm like Canteen to provide vending and in-plant feeding services at such locations.

14. A trend of mergers has begun between firms with a full-line vending and manual food service capability on the one hand and large diversified firms on the other. In 1964, Greyhound Corporation, the largest bus operating company in the United States, acquired The Prophet Company. And in 1967, Ogden Corporation, another diversified firm, acquired ABC Consolidated Corporation.

15. "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity

101507

effect" refers to the tendency of a firm selling or desiring to sell to another company to channel its purchases to that company.

16. A firm's reciprocity power and ability to benefit from reciprocity effect grow as its purchasing capacity and product diversity are increased. At the present time, ITT makes purchases of goods and services well in excess of $550,000,000 from numerous domestic suppliers. In 1967, ITT purchased more than $100,000 in goods or services from each of approximately 725 companies, including 61 of the top 100 corporations on the Fortune list of industrial companies, 99 of the top 200, and 150 of the top 500. It is estimated that ITT's actual and potential suppliers employ about one-third of the nation's industrial labor force.

17. The number of ITT's actual and potential suppliers will increase as ITT and other industrial firms continue to grow rapidly by acquisition and merger. The scale and pace of merger activity is increasing rapidly. Mergers in 1967 involved the acquisition of concerns with $8.25 billion in manufacturing and mining assets and, in 1968, of concerns with more than $12.5 billion in such assets. The proportion of the total assets of the nation's manufacturing corporations

held by the 200 largest firms has increased from 48.1% in 1948 to 54.2% in 1960 and 58.7% in 1967. The great bulk of this increase in concentration has resulted from mergers and acquisitions.

101507

V

OFFENSE CHARGED

18. On or about November 14, 1968, ITT and Canteen entered into an agreement pursuant to which ITT will acquire all of the stock of Canteen. This acquisition is due to be consummated on or about April 25, 1969.

19. The effect of the aforesaid acquisition may be substantially to lessen competition or tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) The power of ITT and Canteen to employ reciprocity or benefit from reciprocity effect in the furnishing of vending and in-plant feeding services will be substantially increased;

(b) Actual and potential competitors of Canteen may be foreclosed from competing for vending



and in-plant food business at industrial and business locations owned by ITT and its subsidiaries; 101507

(c) The competitive advantages which will accrue to Canteen, a leading firm, as a result of this merger will raise barriers to entry and discourage smaller firms from competition in the vending and in-plant feeding businesses;

(d) This acquisition will tend to trigger other mergers by competitors of Canteen seeking to protect themselves from the impact of this acquisition or to obtain similar competitive advantages.

VI

PRAYER

WHEREFORE, the plaintiff prays:

1. That a preliminary injunction be issued enjoining the defendants, their officers, directors, agents, and employees and all other persons acting in their behalf from taking any further action to carry out or consummate the aforesaid acquisition or otherwise from transferring all

10

or any part of the stock or the business of Canteen to ITT pending final adjudication of the merits of this Complaint.

2. That ITT's acquisition of the stock of Canteen be adjudged a violation of Section 7 of the Clayton Act.

3. That ITT and Canteen and their officers, directors, agents, and all other persons acting on behalf of either ITT or Canteen or both be enjoined from carrying out the aforesaid agreement or any agreement for the acquisition of stock or assets of Canteen by ITT.

4. That the plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover the costs of this suit.

RICHARD G. KLEINDIENST
Deputy Attorney General

Richard W. McLaren

RICHARD W. McLAREN
Assistant Attorney General

Baddia J. Rashid

BADDIA J. RASHID

JOHN W. POOLE, JR.

GARY M. COHEN

JOSEPH A. TATE

Attorneys, Department of Justice

CHARLES D. MAHAFFIE, JR.
Attorneys, Department of Justice

United States Attorney

101507

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

JOHN W. POOLE, JR., being duly sworn, deposes and says that he is an attorney employed by the Department of Justice of the United States; that he has been actively engaged in the preparation of this proceeding; that he has read the foregoing complaint and knows the contents and is familiar with the subject matter thereof; that he is informed and believes the allegations of fact contained therein are true; and that the sources of his information are written statements, data, and documents submitted to the Department of Justice by the defendants, public documents, data, and publications, and interviews and communications with persons engaged in the industries described in the complaint.

JOHN W. POOLE, JR.

Subscribed and sworn to before me
this_____day of_____, 1969.

Notary Public

exchanges here, and on the credit rating which its outstanding debt securities receive. Dean Willis Winn, in his remarks particularly referred to the importance of the credit worthiness of a U.S. based company in the United States to successful financing abroad, a major requirement for companies with foreign operations like ITT's in light of the current balance of payments situation.

A major reduction in available cash such as that demonstrated above, will, in addition to having the obvious adverse operational impacts which inevitably follow a contraction of cash, have an adverse impact on equity values as dividends on the common stock come under pressure. Such a cash shortfall would also undoubtedly have an adverse impact on the holders of outstanding ITT debt instruments and on ITT's ability to raise additional funds through debt financing here, but more significantly, abroad.

Among the adverse consequences to the nation that would inevitably follow from the requisite contraction by ITT of its foreign operations is loss of market shares to major foreign competitors such as Ericsson, Siemens, Philips, Nippon Electric and Hitachi. Loss of market shares abroad can only result in a diminution of the cash which ITT would have otherwise repatriated to the United States. It would appear contrary to the national interests of this country to take consciously actions which would have such an adverse impact on the *balance of payments*.

Thank you once again for the courtesies which were extended to me, Dr. Saulnier, Dean Winn, and counsel. We very much appreciated the opportunity to discuss the overall policy implications of this situation with you, Mr. Kleindienst and Mr. MacLaury.

Very truly yours,

FELIX G. ROHATYN.

MEMORANDUM FROM RICHARD W. M'LAREN TO RICHARD G. KLEINDIENST, APRIL 25, 1969, ON FILING ITT-CANTEEN COMPLAINT

APRIL 25, 1969.

To: Richard G. Kleindienst, Deputy Attorney General.
From: Richard W. McLaren, Assistant Attorney General.
Subject: ITT-Canteen.

The determination has now been made to go ahead and file the complaint in this case on Tuesday, April 29 The complaint will be coming up to you for signature on Monday.

MEMORANDUM FROM DONALD BAKER TO RICHARD M'LAREN, APRIL 22, 1969, EXPLAINING CANTEEN CASE REGARDING RECIPROCITY THEORY AND MERGER GUIDELINES

U.S. GOVERNMENT MEMORANDUM,
DEPARTMENT OF JUSTICE,
April 22, 1969.

To: Richard W. McLaren, Assistant Attorney General, Antitrust Division.
From: Donald I. Baker, Chief, Evaluation Section.
Subject: ITT Canteen—Reciprocity Theory.

You asked me for an explanation as to whether the proposed *ITT-Canteen* case would fall within our Merger Guidelines. Having talked with Bob Hammond, I think that I can say that it would.

The relevant provision is Paragraph 19(a)—a difficult provision—dealing with structural conditions giving rise to reciprocity:

19. Mergers Creating Danger of Reciprocal Buying.

(a) Since reciprocal buying (i. e., favoring one's customer when making purchases of a product which is sold by the customer) is an economically unjustified business practice which confers a competitive advantage on the favored firm unrelated to the merits of its product, the Department will ordinarily challenge any merger which creates a significant danger of reciprocal buying. Unless it clearly appears that some special market factor makes remote the possibility that reciprocal buying behavior will actually occur, the Department considers that a significant danger of reciprocal buying is present whenever approximately 15% or more of the total purchases in a market in which one of the merging firms ("the selling firm") sells are accounted for by firms which also make substantial sales in markets where the other merging firm ("the buying firm") is both a substantial buyer and a more substantial buyer than all or most of the competitors of the selling firm.

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE AUSTIN
Jury demand date:

C Form No. 106A Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA, Plaintiff, vs INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, Defendant.	For plaintiff: ~~Thomas A. Foran~~ William J. Bauer U. S. Attorney Roy L.Ferre, Peter H. Goldberg John W. Poole, Jr. John E. Sarbaugh Attys. Dept. of Justice Room 2634, U.S. Courthouse 219 S. Dearborn, 60604 353-7538 Richard W. McLaren Assistant Attorney General Washington, D.C. John W. Poole, Jr. Antitrust Division, Dept. of Justice Washington, D.C. 20530 For defendant: Thomas F. Gardner, Jeffrey J. Kennedy Hammond E. Chaffetz, William R. Jentes and John H. Morrison for Kirkland,Ellis,Hodson,Chaffetz &Master 2900 Prudential Plaza 60601 Ra. 6-2929 David P. List & Robert E. Mason for Leibman,Williams,Bennett,Baird& Minow ~~208 S. LaSalle,~~ 60604 346-2200 One First Nat'l Plaza Edward T. Tait for Whitlock,Markey and Tait Shreham Bldg. Washington, D.C. 20005 202-783-7995

A TRUE COPY ATTEST
H. STUART CUNNINGHAM, CLERK
BY [signature]
DEPUTY CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
DATE: FEB 6 1974

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 5 mailed	Clerk								
J.S. 6 mailed	Marshal								
Basis of Action: ANTI-TRUST Clayton Act. Seeks: injunction	Docket fee								
	Witness fees								
Action arose at:	Depositions								

69C 924

DATE	PROCEEDINGS	Date Orde Judgment N
4-28-69	Filed complaint (JS-5)	$15.00
4-28-69	Filed designation	
4-28-69	Filed attorney's instructions regarding service of summons JWH	
4-29-69	Issued summons and one copy with one copy of complaint JWH	
4-29-69	Filed appearance of defendant and that of attorneys together with six (6) Affidavits under rule 39. Y	
5-8-69	Cause continued to May 27, 1969 at 9:00 A.M. for pretrial conference in Chambers, Room 2588.- Austin,J Mailed notices 5-9-69 Y	
5-15-69	Filed stipulation.	
5-15-69	Enter order upon stipulation to extend to June 17, 1969 defendant's time to answer, move or otherwise plead to the Complaint.-Austin,J Mailed notices 5-16-69 Y	
5-27-69	Pre-trial conference held and adjourned to June 30, 1969 at 9:00A.M. Austin,J Mailed notices 5-28-69 Y	
5-27-69	Filed letter/agreement dated May 27, 1969 from Kirkland,Ellis,Hodson,Chaffetz and Masters attorneys for defendant to Hon. Richard W. McLaren Assistant Atty. General Y	
6-9-69	Filed Plaintiff's notice and Motion for Production of Documents.	
6-9-69	Filed Stipulation. Y	
6-17-69	Filed answer of Defendant	
6-19-69	Filed summons returned served. $5.32	
6-25-69	Filed Plaintiff's interrogatories to Defendant. Y	
6-30-69	Pretrial conference held and adjourned to September 30, 1969 at 9:30 A.M.-Austin,J Mailed notices 7-1-69 Y	
7-1-69	Filed defendant's interrogatories, set No. 1 to be answered by the Plaintiff. Y	
7-3-69	Filed Plaintiff's notice to take deposition upon oral examination of Maurice Glockner.	
7-3-69	Filed Plaintiff's notice to tkae deposition upon oral examination of James T.McGuire.	
7-3-69	Filed Plaintiff's notice to take deposition upon oral examination of PatrickL. O'Malley.	
7-3-69	Filed Plaintiff's notice to take deposition upon oral examination of Charles J. Ritzen. Y	

Continued

The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the settlement of Government antitrust litigation for partisan political reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate, I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

I am here this morning with respect to the matters involving the ITT Co. and its antitrust matters before the Department of Justice to tell you what I did. And I have here with me this morning Judge McLaren, the Federal District Judge of the Northern District of Illinois, and Mr. Felix Rohatyn, a member of the board of directors of ITT, being the two persons with whom I had any dealings in connection with these matters to also have them tell you what they did. And to the extent that it involves me, to have them tell you what I did.

I was involved in any way with respect to these antitrust matters by virtue of the fact that the Attorney General, in 1969, disqualified himself from the consideration of any matters involving the I.T. & T. Corp. The reason why he disqualified himself is that his former law firm has performed legal services, I believe, for subsidiaries of I.T. & T. and, therefore, felt from the standpoint of proper conduct that he should not become involved in any matter or consideration or decision that would involve these companies.

In 1969, at the recommendation of then Assistant Attorney General McLaren in the Antitrust Division I signed as the Attorney General in these cases, and as required by law, the complaints or authorized the filing of complaints against the acquisition or proposed acquisition by I.T. & T. in connection with three corporations, the Canteen Corp., the Grinnell Corp., and the Hartford Corp. Those complaints and the nature of those actions will be discussed in more detail, I believe, by Judge McLaren this morning.

But, in any event, all three of those complaints, seeking on behalf of the Government to prevent their acquisition by I.T. & T. were filed in the year 1969 by the Department of Justice.

I really had very little to do or relationship with or knowledge about the ordinary process of those cases in the year 1969. Indeed, I have no recollection of having any meetings other than routine, or of a very nominal nature in that year with respect to any one of those cases.

Approximately April 20, 1969, I received a call from Mr. Felix Rohatyn, who is sitting here to my left, in which he identified himself to me as a member of the board of directors of I.T. & T., and he stated that he was not a lawyer and that he would like to come to my office to discuss some of the economic consequences of the policy of the Department of Justice to require by I.T. & T. a divestiture of the Hartford Insurance Co. As a result of our discussion on the telephone Mr. Rohatyn came to my office on April 20, 1969. He again opened up the conversation, and incidentally, only Mr. Rohatyn and I were

RICHARD G. KLEINDIENST

TUESDAY, MARCH 14, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 11:20 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Tunney, Hruska, Fong, Scott, Thurmond, Cook, and Mathias.

Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. Will you stand up, please, sir.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. MITCHELL. I do, Mr. Chairman.

The CHAIRMAN. Mr. Attorney General, identify yourself for the record.

TESTIMONY OF JOHN N. MITCHELL, FORMER ATTORNEY GENERAL OF THE UNITED STATES

Mr. MITCHELL. Mr. Chairman, my name is John N. Mitchell, former Attorney General of the United States having resigned that office——

The CHAIRMAN. Wait just a minute. Let them clear out.

Now proceed, sir.

Mr. MITCHELL. Having resigned that office on March 1, 1972.

Would you require further identification?

The CHAIRMAN. No, sir.

Mr. MITCHELL. Mr. Chairman, I have a short statement that I would like to read.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you. I would like to address myself to the three points which relate to my relationship—or rather my non-relationship—to the subject matter of this hearing.

The first pertains to the litigation initiated by the Antitrust Division against ITT. When the first of three such matters reached the stage for consideration by the Attorney General in April 1969, in accordance with departmental practice, I disqualified myself on the gounds that my former law firm had done legal work for one of ITT's subsidiaries.

After that date, all matters pertaining to the ITT litigation rested in the hands of the Deputy Attorney General and the Assistant

(539)

Attorney General in charge of the Antitrust Division. I was not informed of the progress of the litigation or negotiations between the Department and ITT.

The second point has to do with my contacts with representatives of ITT.

At no time have I talked to any representative of ITT or any of its subsidiaries concerning the litigation or the settlement negotiations.

Based on the records of my office as Attorney General and on my own recollection, I have had contact with three representatives of ITT. I present them in chronological order.

First contact was with Mr. Harold Geneen, president of ITT. The first time I met Mr. Geneen was the evening of May 27, 1970 at a dinner in the White House attended by 45 business leaders. The contact with Mr. Geneen that evening was purely social, and I had no substantive discussions of any kind.

My second contact with Mr. Geneen was on August 4, 1970, in my office. My office calendar shows that this meeting could not have lasted more than 35 minutes. It might have been shorter. The meeting was held at Mr. Geneen's request to discuss the overall antitrust policy of the Department with respect to conglomerates. I assented to the meeting on the express condition that the pending ITT litigation would not be discussed. Mr. Geneen agreed to this condition. The pending ITT litigation was not discussed at this meeting.

At the meeting Mr. Geneen contended that the Department's antitrust policy with respect to conglomerates was to bring suits solely on the bigness theory. I told him this was not the Department's policy and advised him that our policy was to bring litigation only where there was a showing of anticompetitive practices.

I never discussed the content of my conversation with Mr. Geneen with any member of the Department, nor did I communicate with any of them about it.

Next, Mr. Felix Rohatyn. I met Mr. Rohatyn on four occasions, two of them on April 29, 1971, one on September 3, 1971 and one on November 29, 1971.

None of these had anything to do with ITT, and the Department's litigation against ITT was never mentioned or discussed.

My participation in these meetings was as a member of an ad hoc government committee formed in 1970 to deal with the financial problems that various brokerage houses were having at that time. Mr Rohatyn, a partner of the New York firm of Lazard Freres, participated as chairman of the surveillance committee of the New York Stock Exchange. Among other things, that ad hoc committee worked on the SIPEC legislation during the summer of 1970.

I would like particularly to call the committee's attention to the two meetings of April 29, 1971, because there have been other references to that date during these hearings.

These meetings were held to discuss the participation of Mr. Ross Perot in the du Pont brokerage firm, which was having financial trouble, and the obligations of the New York Stock Exchange with respect thereto.

According to my office records, the first meeting that day commenced at 9:40 a.m. Present in addition to myself were Mr. Perot, and Mr. Mort Myerson, an associate of Mr. Perot. Mr. Peter Flanigan joined the meeting at 9:46 and Mr. Rohatyn at 10:30. Mr Rohatyn

ASSISTANT ATTORNEY GENERAL
Antitrust Division

Department of Justice
Washington, D.C. 20530

APR 7 1969

OFFICE OF THE ATTORNEY GENERAL
RECEIVED
APR 7 1969

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Acquisition of Canteen Corporation by International Telephone and Telegraph Corporation: Proposed Complaint Seeking Preliminary Injunction

Submitted herewith for your approval is a Complaint seeking a preliminary injunction, as well as permanent relief, against the proposed acquisition of Canteen Corporation ("Canteen") by International Telephone and Telegraph Corporation ("ITT").

At our request, the acquisition, which has the necessary shareholder approval, has been delayed until at least April 10, 1969. Our last advice was that the parties were still awaiting a tax ruling by IRS. In any event, we can reasonably expect consummation of the merger on or shortly after April 10.

The Complaint charges that the acquisition may lessen competition and tend to create a monopoly in the vending and in-plant feeding businesses in the United States as a whole. Canteen and its franchised distributors are the largest organization in the United States in the business of retailing food and related items through coin-operated vending machines. They are one of the largest organizations in the business of providing in-plant feeding and vending to industrial plants. ITT industrial plants are part of the market for companies like Canteen. Furthermore, ITT makes purchases from many companies which are actual or prospective customers for Canteen. We contend that through vertical integration and reciprocity this acquisition will foreclose a substantial portion of the relevant markets from competition, entrench a leading firm, raise barriers

to entry and very likely trigger similar mergers by other leading food and vending firms. Food and vending has traditionally been a service business where the small independent who was willing to work hard could compete effectively. A few mergers of the sort we have here could seriously change that healthy industry structure.

We believe that a preliminary injunction is particularly necessary here. If we allow Canteen's public ownership to be bought out, another corporation will likely be the eventual purchaser of Canteen. Almost any merger of Canteen with another corporation will augment Canteen's reciprocity power advantage over many of its smaller competitors.

The Companies Involved

ITT

By virtue of an aggressive acquisition program, ITT, once principally an overseas operator of telecommunications and manufacturer of telecommunications equipment, has become the United States' largest conglomerate. 1967 sales of ITT and the companies it acquired in 1968 were approximately $3,578,000,000 (which would make it about the 12th largest industrial corporation). About 60% of ITT's revenues come from domestic manufacturing and services including electronic equipment, pumps and air conditioning, chemicals, publishing, automobile rentals (Avis Rent-a-Car, acquired in 1965) and airport-parking (APCOA, acquired in 1966). ITT's acquisition program reached a new peak in 1968 when it acquired corporations with combined sales of over a billion dollars, including Continental Baking Co., the nation's largest baking company, Sheraton Corporation of America, one of the two largest hotel chains, Levitt & Sons, a leading residential construction firm, and Rayonier, Inc., a leading producer of chemical cellulose. Continental Baking and Rayonier were among the Fortune top 500 industrial corporations.

This acquisition program does not seem to be diminishing. ITT is now planning to acquire Grinnell Corporation, another one of the top 500 industrial

corporations, and Hartford Fire and Casualty, a leading firm in fire and casualty insurance.

Canteen

Canteen (formerly Automatic Canteen Corporation) was the first nationwide vending company and its organization is still the leader in the vending industry. Canteen and its franchised distributors had 1968 combined vended sales of approximately $290,000,000 or 6% of industry sales.

Of Canteen's 1968 total sales of $322,000,000, about $207,000,000 were in vending. Most of the rest were attributable to other kinds of food service--"manual" cafeterias and snack bars for industrial plants, specialized feeding for hospitals and schools, restaurants and special concessions. Until recently, Canteen was the largest food service company in the United States. It is now second to Automatic Retailers of America ("ARA").

The Trade and Commerce Involved

We treat this case in terms of three lines of commerce:

The Vending Industry is a well recognized industry retailing food and related items through coin-operated machines. There are approximately 6,200 operators in the industry ranging from one-man cigarette venders to a few large nationwide or large regional companies. 1967 industry sales were about $4.5 billion and as indicated, Canteen is the leader with about 6% of sales. About 40% of all vending sales are made at industrial or business locations by contract or arrangement with the proprietor.

Full-Line Vending is the vending of full meals through machine. Although the concept of full-line venders is an accepted one there are no definitive statistics on this submarket. Industry sources estimate that somewhat less than half of all venders have full-line capability.

The In-Plant Feeding and Vending were traditionally two businesses--the business of catering for employees at industrial locations through in-plant facilities such as cafeterias and snack bars, and the supplementary

vending of cigarettes and candy at such locations. Now in-plant feeding can be done through vending machine and diversified companies like Canteen try to contract with an employer to provide all of his manual and vending service. Thus, there is a new cluster of services combining in-plant feeding and vending. Companies like Canteen are no longer called venders; they are "food and vending" companies. Again we cannot plot the exact size and shape of the market but it is general industry knowledge that ARA and Canteen are the most important companies in "in-plant food and vending" and we estimate that Canteen has at least 10% of sales. The proposed acquisition will have its heaviest impact in this market.

Although these markets are not heavily concentrated a definite trend toward concentration is underway. Many of the leading firms in these businesses have been created since 1959 by mergers or acquisitions. A substantial acquisition trend continues.

There are also the beginnings of a conglomerate merger trend. The largest company to buy into this market was Litton Industries (about half the size of ITT) which in 1967 bought Stouffer Foods Corp., which had a relatively small in-plant feeding business. ITT's acquisition of a leading nationwide firm creates reciprocity problems of a new magnitude.

The Impact of the Acquisition

ITT has now identified those domestic suppliers who sold it $100,000 or more of goods and services in 1967. This list of less than 750 suppliers is sufficient to show that the anticompetitive effects of this merger could be direct and substantial. The list includes 99 of the top 200 corporations on the Fortune 500. It shows that ITT had purchases of a million dollars or more from over a hundred corporations and that the industries from which ITT purchased a million dollars or more included automotive, foods, packaging, steel, aluminum, copper, tires, chemicals, oil, electrical & electronic equipment, computers, home appliances and lumber. We estimate that over a third of the American industrial work force is employed by these industries.

The acquisition could put immediate pressure on Canteen's competitors. Of ARA's leading industrial accounts in 1968, at least 16 of the top 30 and 36 of the top 100 were ITT suppliers. The 36 accounted for over $57,000,000 of ARA's sales. Similarly, Interstate United Corporation, the fourth largest food and vending company, does 24% of its total business with six companies in the automotive and steel industries where ITT makes purchases of many millions of dollars.

It is clear that a substantial portion of Canteen's existing business will tend to be insulated from competition. Of Canteen's 700 food and vending service accounts, at least 81were ITT suppliers in 1967; 5 were ITT divisions or subsidiaries.

It should be pointed out that we have a double-barrelled market foreclosure--reciprocity coupled with vertical integration. While this vertical integration involves less than 1% of the in-plant food and vending market it is nonetheless substantial. ARA and Canteen together do more than $1,000,000 of business with ITT and many other food and vending companies have ITT business.

A good many companies in this industry including leaders like ARA and Interstate United and numerous small independents have expressed strong opposition to the merger and insist that it could have a serious impact on industry structure. We agree. ITT's 1967 purchases from business firms were a minimum of $550,000,000; this is considerably higher than the total sales of ARA and hundreds of times larger than the sales of smaller operators. It seems inevitable that Canteen's competitors will seek to merge with conglomerates or with each other in order to protect themselves against this tremendous imbalance of purchasing power. A series of such mergers could subject virtually all of the in-plant food and vending business to reciprocity by a few leading firms. If Antitrust is ever to take action to prevent such a restructuring of the market, this acquisition of a leading firm by the largest conglomerate is the one to challenge.

Legal Precedent for the Case

Reciprocity 1/ resulting from a merger has been held to violate § 7 of the Clayton Act, F.T.C. v. Consolidated Foods Corp., 380 U.S. 592; United States v. General Dynamics Corp., 258 F. Supp. 36. As stated by the Supreme Court in Consolidated Foods, 380 U.S. at 595:

> Reciprocity in trading as a result of an acquisition violates § 7 if the probability of a lessening of competition is shown.

The primary reason why reciprocity is "one of the congeries of anticompetitive practice of which the anti-trust laws are aimed", Consolidated Foods, supra at 594, is that it is a way of obtaining business other than on a product's merits and which effectively can be practiced by large and diversified firms. Reciprocity, therefore, is an "irrelevant and alien factor" in the marketplace which imposes entry and growth barriers to small single product firms, op. cit. 592.

This case goes somewhat further than both Consolidated Foods and General Dynamics in that we have no evidence of a systematic reciprocity program practiced by the merged firms after their union. Rather, this action is filed prior to the consummation of the merger to enjoin in its incipiency a competitive danger. See Brown Shoe Co. v. United States, 320 U.S. 294; Consolidated Foods, supra at 598. The competitive danger upon which we rely is the power to practice reciprocity created by the merger. That the creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect was recognized by the Supreme Court in Consolidated Foods; as stated in United States v. Ingersoll-Rand Co. 218 F. Supp. 530, 552, affirmed 320, F.2d 509:

> . . .[t]he mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is

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1/ A firm's reliance upon its purchasing power to induce others to buy its products.

frequently sufficient, as sophisticated businessmen are quick to see the advantages in securing the goodwill of the possessor.

We relied upon this theory in attacking the acquisition of Penick & Ford, Ltd. by R. J. Reynolds Tobacco Company. In that case, we were denied a preliminary injunction because the District Court placed heavy reliance upon testimony of the Reynolds' officers that they would not engage in a reciprocity program. United States v. R. J. Reynolds Tobacco Co., 242 F. Supp. 518 (D. N.J. 1965). We would hope to convince the court in this case that an injunction should issue and that the Court erred in Penick & Ford.

We are prepared to present some evidence that reciprocity has in the past influenced procurement decisions in the in-plant food and vending market. This would be to illustrate the vulnerability of that industry to reciprocity and not establish that the merged ITT and Canteen will practice it.

We believe that this merger would create a vast complex of buyer-seller relationships not enjoyed by any competitor of Canteen. This would give Canteen an unfair competitive advantage. Canteen's position as one of the few nationwide firms in the vending field, and as a leader in the industry, makes the danger of its position being further enhanced through reciprocal dealing of substantial competitive significance. Cf. FTC v. Procter and Gamble Co., 386 U.S. 568.

Conclusion

I recommend that the attached complaint be approved and that we be authorized to seek a temporary restraining order pending a hearing on a motion for preliminary injunction.

RWMcLaren

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Approved:

_____

Date:

2. On August 1, 1969 two antitrust suits similar to the Canteen suit were commenced in the United States District Court for the District of Connecticut challenging ITT's acquisition of the Hartford Fire Insurance Company and Grinnell Corporation.

Page

2.1 United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civ. No. 13319, Docket, 1-2..... 102

2.2 United States v. International Telephone and Telegraph Corporation and Hartford Fire Insurance Company, Civ. No. 13320, Docket, 1-2..... 104

2.3 Memorandum from Richard McLaren for the Attorney General, June 20, 1969 (received from Department of Justice)..... 106

2.4 Memorandum from Richard McLaren for the Deputy Attorney General, approved July 25, 1969 (received from Department of Justice)..... 120

41-531 O - 74 - 8

13319

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA VS INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND ~~GRINNELL CORPORATION~~ Dismissed	For plaintiff: ~~Richard G. Kleindienst~~ Richard W. McLaren ~~Baddia J. Rashid~~ ~~Robert B. Hummel~~ Lewis Bernstein Joseph H. Widmar Howard B. Myers Donald J. Frickel Department of Justice John Cassidento Federal Building New Haven, Conn.
Joseph P. Cooney Cooney, Scully & Dowling ~~265 Pearl Street~~ Hartford, Conn. 06103 Bruce W. Manternach (For: A-T-O, Inc.) 799 Main Street Hartford, Conn. 06103 Gerald Norton - Admitted Henry P. Sailer Covington & Burling 888 Sixteenth St. N.W. Washington, D. C. 20006 ~~David R. Williams~~, Gen. Counsel ~~Grinnell Corp.~~ ~~260 West Exchange St.~~ ~~Providence, R.I.~~ Denis G. McInerney (For: Grinnell Corp.) ~~William T. Lifland~~ ~~Cahill, Gordon, Sonnett, Reindel & Ohl~~ ~~80 Pine Street~~ ~~New York, N.Y. 10005~~	For defendant: ~~Dis-~~ ~~H. Neale Alcorn, Jr.~~ (For: Grinnell Corp.) ~~Ralph G. Elliot~~ ~~Alcorn, Baldwin & Smith~~ ~~One American Row~~ ~~Hartford, Conn. 06103~~ ~~With-~~ Ralph G. Dixon (for: Intl. T & T) ~~Day, Berry & Howard~~ ~~One Constitution Plaza~~ ~~Hartford, Conn. 06103~~ ~~drawn~~ Richard M. Reynolds (For: Intl. Tel. & Tel. Corp. ~~Day, Berry & Howard~~ ~~One Constitution Plaza~~ ~~Hartford, Conn. 06103~~

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk				
J.S. 6 mailed	Marshal				
Basis of Action: Antitrust Suit. Action to enjoin defendants from violating Section 7 of the Clayton Act, as amended. (15 U.S.C. § 18)	Docket fee				
	Witness fees				
	Depositions				

13319

DATE 1969	PROCEEDINGS	Date Order Judgment N
8/1	Complaint filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.	
8/6	Motion for Preliminary Injunction and Notice of Motion, filed by plaintiff.	
"	Affidavit in Support of Plaintiff's Motion for a Preliminary Injunction, filed by Stephen A. Arnow.	
"	Affidavit of Gordon A. Noe, filed.	
"	Affidavit of Joseph H. Widmar in Support of Motion for a Preliminary Injunction, filed.	
"	Affidavit of Joseph H. Widmar in Verification of Government's Exhibits 1-55, filed.	
"	Government Exhibits 1 - 55, filed.	
"	Certificate of Service of above documents, filed by plaintiff.	
8/8	Appearance of H. Meade Alcorn, Jr. and Ralph G. Elliot, entered for defendant, Grinnell Corporation.	
8/11	Appearance of Ralph C. Dixon of Day, Berry & Howard entered for the defendant International Telephone and Telegraph Corp.	
8/13	Stipulation for Enlargement of Time of the defendants to answer or otherwise plead to and including Sept. 3, 1969, filed. Order entered thereon extending time to Sept. 3, 1969. Timbers, J. Copies mailed Messrs. Dixon, Elliot and Jones. M-8/14/69.	
8/15	Marshal's Return showing service on Grinnell Corp., filed.- Summons & Complaint.	
"	Marshal's Return Showing Service on I.T.T.Corp., filed.- Summons & complaint.	
"	Memorandum in Support of Plaintiff's Motion for Preliminary Injunction, filed by plaintiff.	
"	Certificate of Service of Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction, filed by plaintiff.	
8/15	Stipulation filed that the following schedule for the preliminary injunction proceedings be follows: Plaintiff will file its motion and supporting papers on August 7; Defendant will file its papers September 3; Plaintiff will file its reply papers September 12; and Hearing will begin September 17. So Ordered. Timbers, J. M-8/18/69 Copies mailed Atty Widmar; Atty Sailer Alcorn and Dixon; copy handed U.S. Atty.	
9/4	Appearance of Richard M. Reynolds, Esq. (of Day, Berry & Howard, Esqs.) entered for the Defendant, International Telephone and Telegraph Corp.	
9/5	Answer, filed by defendant Grinnell Corp.	
9/5	Memorandum of DefendantGrinnell Corp. Opposing Motion for Prelininary Injunction, filed.	
9/5	Answer, filed by Defendant International Telephone & Telegraph Corp.	
9/5	Memorandum of International Telephone and Telegraph Corp. in Opposition to Plaintiff's Motion for a Preliminary Injunction, with exhibits attached thereto, filed.	
9/16	Reply Memorandum and Exhibits 56 - 89, filed by United States.	
"	Affidavit of Joseph H. Widmar in Verification of Government's Exhibits 56 - 89, filed by U.S.	
"	Certificate of Service, filed by United States.	
9/17	Hearing on Government's Motion for Preliminary Injunction. Assistant U.S. Attorney Daniel Sagarin moves for the admission of Joseph H. Widmar, Howard B. Myers and Donald J. Frickel for	

(Cont'd.)

ASSIGNED TO JUDGE BLUMENFELD
FOR ALL PURPOSES

1334

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 105 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA VS INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION and THE HARTFORD FIRE INSURANCE COMPANY	For plaintiff: ~~Richard G. Kleindienst~~ Richard W. McLaren ~~Baddia J. Rashid~~ Howard H. Corlson ~~Robert B. Hummel~~ ~~Alan A. Purves~~ Samuel Karp ~~Bruce C. Cyr~~ ~~Howard E. Shapiro~~ William H. Rowan ~~Richard W. Clinton~~ ~~Bruce C. Rhoads~~ Department of Justice, Antitrust Div. Stewart H. Jones Washington, D.C. ~~Richard A. Solomon~~ 20530 Federal Building New Haven, Conn.
Dwight Schweitzer (For: Interveners) Bruce Mayor 190 Trumbull Court Hartford, Conn. 06103 Of Counsel: Alan B. Morrison ~~733 Fifteenth~~ St., N.W. Washington, D. C. ~~20005~~ 20036	For defendant: (1) Ralph G. Dixon (2) Richard H. Day, Berry & Howard Reynolds 1 Constitution Plaza Hartford, Conn. 06103 John H. Schafer Henry P. Sailer Covington & Burling ~~701 Union Trust Building~~ 888 Sixteen Washington, D. C. 20006 th St., N.W.
Dwight Owen Schweitzer (For: Ralph Nader & Reuben Robertson as Amici Curiae) 190 Trumbull Street Hartford, Conn. 06103	Joseph P. Cooney (For: The Hartford Cooney and Scully Fire Ins. Co.) 266 Pearl Street Hartford, Conn. 06103

STATISTICAL RECORD	COSTS	DATE 1969	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk	8/6	Public Citizen, Inc. Litigation Group (Alan Morrison) Esq.	5 00	
J.S. 6 mailed	Marshal				
Antitrust Suit. Basis of Action: Action to enjoin defendants from violating Section 7 of the Clayton Act, as ~~Action now~~ amended. (15 U.S.C. §18)	Docket fee	8/7	Deposit: C.F. 10059		5 00
	Witness fees				
	Depositions				

18320

DATE 1969	PROCEEDINGS	Date Order Judgment N.
8/1	Complaint filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.	
8/11	Appearance of Ralph C. Dixon of Day, Berry & Howard entered for the defendants.	
8/15	Marshal's Return Showing Service on I.T.T. Corp, filed. - Summons & complaint.	
"	Marshal's Return Showing Service on Hartford Fire Ins. Co., filed. -Summons & complaint.	
8/15	Stipulation filed that the following schedule for the preliminary injunction proceedings be followed: Plaintiff will file its motion and supporting papers on August 20; defendant will file its papers on September 10; Plaintiff will file its reply papers on September 17; and the hearing will begin on a date following conclusion of Grinnell hearing. So Ordered. Timbers, J. M-8/13/69 Copies mailed Attys Coyle, Sailer and Dixon; copy handed U.S. Atty.	
8/21	Motion for Preliminary Injunction, Notice of Motion, Memorandum in Support of Motion and Original and Copy of Government's Exhibits GX-1 thru GX-44 and GX-45 thru GX-118 (Two Volumes), filed. together with certificate of service of above documents.	
8/22	Stipulation for Enlargement of Time or the defendants to move, answer, or otherwise plead to and including September 10, 1969, filed. So ordered: Time extended to 9/10/69. Timbers, J. Stipulation endorsed as follows: "8/21/69 I assume that this extension does not affect the hearing schedule heretofore ordered. WHT, 8/21/69" Copies mailed Coyle, U. S. Attorney, Atty. Dixon and Atty. Sailer.M 8/22/69.	
9/10	Answer, filed by Defendant The Hartford Fire Ins. Co.	
"	Memorandum of Defendant Hartford Fire Insurance Co. Opposing Motion for Preliminary Injunction, filed.	
9/11	Prehearing Memorandum of International Telephone and Telegraph Corporation in Opposition to Plaintiff's Motion for Preliminary Injunction, filed.	
9/12	Appearance of Richard M. Reynolds, entered for defendants.	
9/17	Reply Memorandum of the United States of America, filed.	
9/17	Additional Government Exhibits GX-119 thru GX-134, filed.	
9/18	Additional Government Exhibit GX-135, filed.	
9/18	Hearing on Plaintiff's Motion for Preliminary Injunction. Upon Motion of Asst. U.S. Attorney Daniel Sagarin, Attys James J. Coyle, William H. Rowe, Richard M. Clinton, Bruce A. Posnak and Seymour Dussman are admitted for the purpose of this case only. Upon motion of Ralph C. Dixon, Attys John H. Schafer, III, Henry P. Sailer and Charles Duffon are admitted for the purpose of this case only - representing I.T.&T. Defendants exhibits DX8, DX32 and DX69 filed. Absent objection Defendants exhibits 1 thru 69 are received as full exhibits for the purpose of preliminary injunction hearing. Absent objection Government exhibits 1 thru 28, 35 thru 135 are received as full exhibits. Gov't. witness: Dr. William Muller of Madison, Wisconsin is sworn and testified. Gov't witness Harold Lacroix of West Hartford, Conn. is sworn and testified. Gov't. witness Dr. Herbert Denenberg of Philadelphia, Pa. is sworn and testified. 4:24 P.M. Government rests. Court adjourned at 4:25 to resume in this case at 10:00 A.M., Sept. 19, 1969. Timbers, J. M-9/19/69	
9/19	Continued hearing on Plaintiff's Motion for Preliminary Injunction. Defendant's witness Alvin S. Friedman of New York, N.Y. is sworn and testified. Continued examination of witness Friedman.	
10/30	Placed on Trial List (Cont'd.)	

SDussman:gmy/wmw

corres. Unit
MR. McLAREN
Mr. Hammond
Mr. Rashid
Mr. Dobey
Mr. Rowan
Mr. Baker
Mr. Dussman
DAG

June 20, 1969

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Acquisition of Hartford Fire Insurance Company by the International Telephone and Telegraph Corporation

I recommend that we challenge, as a violation of Section 7 of the Clayton Act, the proposed merger of Hartford Fire Insurance Company ("Hartford") and International Telephone and Telegraph Corporation ("ITT"). On the basis of revenues, ITT is the 11th largest industrial firm in the United States. Hartford is the sixth largest property and casualty insurance company in the nation, and ranks among the three leaders in certain lines of casualty insurance.

The merger agreement between ITT and Hartford was executed on April 8, 1969. The earliest consummation date appears to be early August. Sometime ago, however, I tentatively agreed to inform the parties of our decision by June 1st; this has been postponed to Monday, June 23rd.

The ITT-Hartford merger would combine companies with total consolidated assets of approximately $6 billion. As such, it would constitute one of the largest mergers, if not the largest one, ever consummated, and could well trigger other big company acquisitions of property and liability insurance companies. The likely anticompetitive consequences of this merger include reciprocity and other foreclosure in insurance, tying effect between insurance and other products, entrenchment of Grinnell Corporation in the sprinkler industry, and increased economic concentration both in and of itself and by triggering further mergers and the removal of a potential force for deconcentration of various markets.

I

THE COMPANIES INVOLVED

A. ITT

ITT, one of the nation's largest conglomerates, had total 1968 sales in excess of $4 billion. Present assets of ITT and its subsidiaries are over $4 billion. On the basis of revenues, it is the nation's 11th largest industrial firm; on the basis of assets, it ranks 14th. ITT employs about 300,000 people worldwide, approximately 60% of whom are in the United States and Canada.

Much of ITT's growth has resulted from some 50 mergers and acquisitions made since January 1, 1960. Its domestic operations include Continental Baking Company, the nation's largest baking company; Sheraton Corporation of America, one of the two largest hotel chains; Levitt and Sons, a leading residential construction firm; Avis Rent-A-Car, the second largest car renting company; and Rayonier, Inc., a leading producer of chemical cellulose. All of these companies were acquired by merger and at least two, Continental Baking and Rayonier, were among the Fortune top 500 industrial corporations at the time of their acquisition. ITT also controls several life and health insurance companies and a small property and casualty insurer. ITT recently acquired Canteen Corporation, one of the nation's two leading vending and food service companies. This acquisition has been challenged by the Department as a violation of Section 7. ITT has also agreed to acquire Grinnell Corporation, a leading firm in the manufacture and installation of automatic sprinkler systems, power piping systems and pipe hangers. This proposed merger is also under investigation by the Antitrust Division.

B. Hartford

Hartford heads a group of 10 insurance companies whose total assets as of December 13, 1968, were $1,891,700,000. Its premium receipts in 1968 totaled $968,800,000, of which over 90% was derived from property and liability insurance. On the basis of premiums received, Hartford ranks sixth among all property and liability insurance companies. It ranks fourth among those companies operating under the agency system, writing property and liability insurance through approximately 17,000 independent agents throughout the country 1/. Hartford is particularly significant in certain lines of insurance, and had the following shares of the market in 1967: fidelity, 7.0%; burglary and theft, 6.1%; inland marine (covering goods in transit), 5.7%; glass, 5.3%; miscellaneous (property damage and bodily injury) liability, 4.9%; and in the very large fire and extended coverage market, 4.3%.

II

ADVERSE COMPETITIVE EFFECTS

A. Reciprocity and Other Foreclosure Effects in Insurance

Reciprocity and reciprocity effect 2/ are examples of the use of economic power in one market to promote a firm's business in another market. As a result, competitors in the affected market lose sales not because of the merits of their products

1/ Some 4,000 to 6,000 other agents represent the Hartford life insurance subsidiaries.

2/ "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm desiring to sell to another company to channel its purchases to that company.

but because of another seller's economic power in a different market. The Supreme Court recognized the unfairness and illegality of reciprocity resulting from mergers in F.T.C. v. Consolidated Foods Corporation, 380 U.S. 592, 595: "Reciprocity in trading as a result of an acquisition violates §7 if the probability of a lessening of competition is shown." Since reciprocity is an "irrelevant and alien factor" (supra at 592), which imposes entry and growth barriers to small single-product firms, it is "one of the categories of anticompetitive practice at which the antitrust laws are aimed" (supra at 594).

The competitive danger is the power to practice reciprocity which is created by the merger. The creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect. As stated in United States v. Ingersoll-Rand Company, 218 F. Supp. 530, 534, affirmed 320 F. 2d 509:

> . . . the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages of securing the goodwill of the possessor.

The extent of the danger from reciprocity and reciprocity effect depends upon the volume of a firm's purchases of goods and services. ITT's total annual purchases from all suppliers are a minimum of $550 million. ITT purchases annually $100,000 or more in goods or services from each of some 750 suppliers, including 99 of the top 200 corporations on the Fortune's 500 list. In the case of more than 100 of these suppliers, ITT's purchases are $1 million or more annually. The industries from which it purchases more than a million dollars annually include automotive, foods, steel, aluminum, copper, tires, chemicals,

oil, electrical and electronic equipment, home appliances, insurance and lumber. Approximately one-third of the American industrial work force is employed in these industries which represent a vast market for the sale of group life, accident and health, and casualty insurance.

All the industries and all of the suppliers from whom ITT purchases have substantial need for property and liability insurance. In addition, there is need for workmen's compensation coverage. Property and liability insurance is a largely undifferentiated product, at least when written by the larger and better-known companies. Hartford presently is one of the largest and most respected writers of such insurance. Consequently, there will be strong opportunity for ITT suppliers to channel their insurance requirements to Hartford, thus resulting in substantial reciprocity effect. In a relatively unconcentrated market, such as property and liability insurance, any introduction of substantial potential for a leading firm to benefit from reciprocity and reciprocity effect will interfere with the functioning of the market and may result in further mergers to offset the merged firm's advantage.

According to numerous sources in the insurance industry, a major new development is group property insurance. Group plans offer insurance at fixed rates to any member of the group who wants to take it. Similar group plans are common in the life insurance field. The most common group is the employees of a business. Hartford, as one of the leading property insurance underwriters, no doubt will be a leader in the group property insurance development field. The potential for reciprocity effect with respect to the employees of ITT's major suppliers in the writing of group property insurance is very substantial. 3/

3/ Many of ITT's suppliers and their employees make substantial purchases of group life and health and accident insurance. Thus, there may be opportunity for reciprocity effect to operate in this area.

A second aspect is the vertical foreclosure which would result from the merger. ITT and its subsidiaries and employees are a substantial market for Hartford insurance. The total domestic insurance purchases of ITT in 1968 were $28 million. While this is an insubstantial percentage of total insurance purchases, it is a not insubstantial dollar amount. It is very likely that much of this insurance business will be transferred to Hartford after the acquisition. Moreover, there are specialized kinds of insurance where the extent of potential foreclosure would be significant. For example, car rental insurance is a distinct type of automobile insurance. Avis now accounts for over 20% of car rentals, all of which could be insured by Hartford.

Another foreclosure effect from the merger relates to Levitt and Sons. Levitt sold 4900 home units in the United States and another thousand in Puerto Rico in 1968, and projects sales of 11,000 units annually within five years. Levitt currently arranges for the home purchaser's hazard insurance. Although Levitt does not require Levitt-arranged insurance, it does provide the insurance papers and notifies the purchaser of the amount of the insurance bill. Under these circumstances, the purchaser is not likely to object to the Levitt-arranged insurance, as illustrated by the fact that 62% of Levitt home purchasers accepted Levitt-arranged insurance in 1968. This amounted to $245,000 in premiums from home purchasers in the United States.

The combined market foreclosure which could result through reciprocity and reciprocity effect, vertical foreclosure and channeling of insurance purchases through ITT subsidiaries, condemns this merger as one in violation of Section 7. This theory was a basis for our pending suits against LTV-J&L and Northwest Industries-Goodrich and our recommended case against First National City Bank-Chubb, and was the sole rationale of ITT-Canteen. The same potential for market foreclosure by ITT exists here as in Canteen. The same rationale should be used with respect to this acquisition as well.

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B. Tying Effect and Entrenchment

In our memorandum of June 12 on the First National City-Chubb merger, we emphasized the possibility that the seller of a scarce product may secure advantages in selling other related products as a result of what we called "tying effect". Tying effect results when the purchaser of the scarce product believes that he could secure it, or could secure it on more favorable terms, if he purchased other products from the seller. Because the second, or tied product, is sold not entirely on its own economic merits, tying arrangements have always been treated strictly under the antitrust laws. For this reason, we think the principle of Consolidated Foods (discussed above) seems equally applicable where market foreclosure is secured by tying rather than reciprocity.

Tying has long been recognized as "serving hardly any purpose beyond the suppression of competition," Standard Oil Co. of Calif. v. U.S., 337 U.S. 293, 305-306, and as having a "pernicious effect on competition and [a] lack of any redeeming virtue . . ." Northern Pacific R. Co. v. United States, 356 U.S. 1, 5-6. Therefore, tying is unlawful "whenever the seller can exert some power over some buyers in the market, even if this power is not complete over them and over all other buyers in the market." Fortner Enterprises, Inc. v. U.S. Steel Corp. O.T. 1968, No. 306, Slip Opinion, pp 7-8 (April 7, 1969).

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House Judiciary Committee staff

B. Tying Effect and Foreclosure

In our memorandum of June 12 on the First National City-Lehman merger, we considered the possibility that the seller of a scarce product may secure power in selling other related products as a result of what we called "tying effect". Tying effect results when the purchaser of the scarce product believes that he could secure it, or could secure it on more favorable terms, if he purchased other products from the seller. Because the second, or tied product, is sold not entirely on its own economic merits, tying arrangements have always been treated strictly under the antitrust laws. For this reason, we think the principle of Consolidated Foods (discussed above) seems equally applicable where market foreclosure is secured by tying rather than reciprocity.

Tying has long been recognized as "serving hardly any purpose beyond the suppression of competition," Standard Oil Co. of Calif. v. U.S., 337 U. S. [illegible], 305-306, and as having a "pernicious effect on competition and [a] lack of any redeeming virtue . . ." Northern Pacific R.R. v. United States, 356 U. S. 1, 5-6. Therefore, tying is unlawful "whenever the seller can exert some power over some buyers in the market, even if this power is not complete over them and over all other buyers in the market." Fortner Enterprises, Inc. v. U. S. Steel Corp., O.T. 1968, No. 306, Slip Opinion, pp 7-8 (April 7, 1969).

In First National City-Chubb, the danger we emphasized was that credit, particularly in times of tight money, might be a source of tying power. Here, the risk is that many types of fire and casualty insurance are scarce products and hence the source of the type of tying effect emphasized above. In other words, a purchaser desiring scarce insurance would, after this merger, be tempted to buy some other product from ITT in the hope of obtaining favorable treatment in procuring the insurance.

This type of tying effect seems particular serious when it has a tendency to entrench a leading firm. Grinnell, which ITT proposed to acquire, is the leading manufacturer and installer of automatic fire protection sprinkler systems. Grinnell's share of the United States market of automatic sprinkler systems is approximately 25% or $60 million annually. Its two largest competitors share approximately another 25% of the market, with the remainder being occupied by several small manufacturers of such equipment and numerous small installers.

Even apart from tying effect, Grinnell might receive benefits tending to entrench it in its position as a result of its affiliation with Hartford. The incentive for installing a sprinkler system is to secure more favorable insurance rates. This factor is often pointed out by the insurance agent; and Hartford agents would be in a unique position to commend Grinnell's sprinklers. Since all sprinkler

systems are basically the same, 4/ tying effect, or even agents recommendation, are likely to have some effect in increasing Grinnell's sales for non-economic reasons. The result in either event, is that Grinnell already the dominant firm in the sprinkler market, would be further entrenched in that position.

4/ All automatic sprinkler systems are either Underwriters' Laboratory or rating bureau approved in order for the insured to obtain reduced rates.

C. Increased Concentration and Elimination of Independent Factors in the Market

As discussed in greater detail in the LTV-J&L and Northwest Industries-Goodrich memoranda, the present conglomerate merger movement has substantially contributed to the rising level of concentration in the economy. As a result of this trend, many large firms which are substantial competitors in concentrated markets have been acquired by other similar entities. The effect has been to place a steadily increasing percentage of the nation's industrial wealth in the hands of a few giant companies. The portion of the total assets of the nation's manufacturing corporations held by the 200 largest firms has increased from 48.1% in 1948 to 54.2% in 1960 and 58.7% in 1967.

The disappearance of many large firms has substantially reduced the number of potential sources of entry into concentrated markets. In addition, the merger movement, which is causing an increasing number of leading firms in concentrated industries to become affiliated with leading firms in other concentrated industries, is entrenching these leading firms and raising barriers to entry. It is thus making deconcentration of those industries less and less likely. The overall result is that leading firms are becoming even more entrenched and barriers to entry are rising. 5/

5/ The insurance industry is already becoming more concentrated through a series of horizontal and conglomerate mergers. In 1968 alone, there were over 200 mergers involving insurance companies.

This merger of a $4 billion industrial corporation and a $2 billion insurance company would be one of the largest mergers, if not the largest one, in history. As such, it is a leading example of the type of conglomerate merger which increases concentration, reduces independent possibilities for deconcentration, and would trigger further acquisitions of insurance firms by manufacturing conglomerates. In addition, it removes Hartford as a potential force for deconcentration through independent entry into numerous manufacturing and consumer service industries.

That Hartford is a potential source of deconcentration in other industries seems clear. Hartford has a surplus of approximately $400 million above the amount necessary to support its present insurance writings. In late 1968, Hartford embarked upon an active program to study possible acquisitions. It appointed a special acquisitions committee of its Board; and this committee reported on October 22, 1968, that

> . . . we should be looking at such businesses as manufacturers or consumer service organizations. The after-tax rate for banks is not the full corporate tax rate (it is about 40%). Mutual funds are generally not profitable enough to interest us initially because the only way to realize their complete profitability is to have other interests in the security business. Life insurance companies do not fit the tax qualification.

The committee actively considered numerous possibilities for acquisition -- including the Dow Chemical Company, Indian Head, Inc., Emhart Manufacturing Company, and Scovill Manufacturing Company.

All of these companies are on the Fortune 500 list (and each, incidentally, manufactures at least some products which overlap with products presently manufactured by ITT). This independent acquisition program lasted less than six months, and came to a halt when Hartford agreed to merge with ITT. It is nonetheless substantial indication that Hartford has both the incentive and the ability to diversify and enter concentrated markets. Thus, this acquisition, like that of Jones & Laughlin Steel, would remove one of the relatively few companies with sufficient resources to become a significant factor in numerous areas of the economy. It would thus foreclose opportunities for deconcentration and decrease the possibility of new entry whether de novo or by acquisition of smaller firms in a market.

CONCLUSION

In terms of assets involved, this merger is approximately twice as large as the LTV-J&L merger. In terms of the new market opened up to ITT, it is of substantially greater significance than either the Canteen or Grinnell acquisitions. In terms of the extent of reciprocity effect, this acquisition is no different than ITT-Canteen. In terms of the extent of tying effect, this acquisition is similar to that in First National City Bank-Chubb. These factors, coupled with the steadily increasing number and size of mergers in recent years, are all relevant to the purpose of Section 7. As the Supreme Court noted in Brown Shoe Company v. United States, 370 U.S. 294, 317, Section 7 is " . . . a keystone in the erection of a barrier to what Congress saw was the rising tide of economic concentration."

The merger between ITT and Hartford creates substantial threats to competition in the areas outlined above. The basic dangers involved in this acquisition derive from the opportunities created for reciprocity and other market foreclosure, for tying effect, which is aggregated by the potential relationship between Hartford and Grinnell, and the increased concentration resulting from a $6 billion merger and the removal of Hartford as a potential force for deconcentration in various industries.

For the reasons indicated, I recommend that we oppose the merger of ITT and Hartford.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Approved:
S/ Richard G. Kleindienst
Date: 6/23/69

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington

FILE
B. J. R.

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Proposed Complaint to Enjoin Acquisition of Grinnell Corporation By International Telephone and Telegraph Corporation

Attached herewith for your approval and signature is a civil complaint seeking a preliminary and a permanent injunction against the proposed acquisition of Grinnell Corporation (Grinnell) by International Telephone and Telegraph Corporation (ITT). We expect that the merger will be consummated on or shortly after August 5, 1969.

The complaint alleges that the acquisition will violate Section 7 of the Clayton Act in that it may substantially lessen competition in the manufacture and installation of automatic sprinkler systems, the manufacture of pipe hangers and power pipe hangers, and the fabrication and installation of power piping systems. The primary anticompetitive effect resulting from this acquisition is entrenchment of Grinnell, a leading firm in several concentrated industries, through its acquisition by ITT, a very large firm. Grinnell is the dominant company in each of several industries and its competitors are, for the most part, relatively small firms. ITT is a major source of purchasing power, which will provide the opportunity for reciprocity and other market foreclosure benefitting Grinnell. In addition, the potential relationship between Grinnell and Hartford Fire, a leading fire insurance company which ITT also plans to acquire, would enable ITT, through Hartford, to promote and increase Grinnell's sales of automatic sprinkler systems. Finally, this acquisition may trigger other mergers by competitors of Grinnell and further the current trend of acquisitions of dominant firms in concentrated markets by large companies.

THE COMPANIES INVOLVED

A. ITT

ITT, one of the nation's largest conglomerates, now ranks among the eleven largest industrial concerns in the United States on the basis of revenues, and 14th in terms of assets. In the period 1955 through 1968, its total sales increased from $502,760,050 to $4,066,502,000 and its assets grew from $687,451,677 to $4,022,400,000. In a recent statement, ITT's president projected 1969 sales of more than $5,000,000,000.

Much of ITT's recent growth has resulted from more than 50 mergers and acquisitions which it made during the period 1961 through 1968. Its domestic operations include Continental Baking Company, the nation's largest baking company; Sheraton Corporation of America, one of the two largest hotel chains; Levitt and Sons, a leading residential construction firm; Avis Rent-A-Car, the second largest car renting company; and Rayonier, Inc., a leading producer of chemical cellulose. All of these companies were acquired by merger, and at least two, Continental Baking and Rayonier, were among the Fortune top 500 industrial corporations at the time of their acquisition. ITT recently acquired Canteen Corporation, one of the nation's two leading vending and food service companies. This acquisition has been challenged by the Department as a violation of Section 7.

ITT has also entered into an agreement of merger with the Hartford Fire Insurance Company. Hartford's consolidated assets at 1968 year-end were $1,891,684,021 and it ranked third in fire and extended coverage insurance. In response to a request from the parties, we have informed counsel for ITT and Hartford that we will oppose the merger; they have indicated that they intend nevertheless to proceed. Earliest consummation would appear to be August or early September.

B. Grinnell

Grinnell ranks number 268 on the 1968 Fortune list of the 500 largest industrial corporations in the United States. It had 1968 sales of $341,282,906 and assets of $184,453,229. Grinnell is the largest manufacturer and installer of automatic sprinkler systems in the United States, with sales of approximately $67,100,000 or 25% of the total market. It is the largest manufacturer of pipe hangers in the United States, having total 1966 sales of $13,348,000 or approximately 50% of the market. Its 1968 sales of power pipe hangers, a specialized type of pipe hanger used in power piping systems, approximated $6,000,000 or 45% of the industry total. Grinnell is also believed to be the largest factor in the power piping industry with 1968 sales of $28,380,000.

THE TRADE AND COMMERCE INVOLVED

A. Automatic Sprinkler Systems

Automatic sprinkler systems consist basically of pipe and sprinkler devices. The sprinkler devices represent approximately 8% of the total installed cost of the system. The automatic sprinkler industry consists of both manufacturers of sprinkler devices and of installers, or so-called sprinkler contractors. The manufacturing of sprinkler devices is highly concentrated, with four companies accounting for approximately 70% of the total. Grinnell is one of the few manufacturers which installs its own systems rather than using independent contractors. It is the largest factor in the industry with total domestic revenues in 1968 from the manufacture and installation of sprinkler systems of $67 million. It is believed that this represents approximately 25% of the industry total.

The entire sprinkler industry is dependent upon the insurance business, since insurance companies offer

substantially reduced fire insurance premium rates if a sprinkler system is installed. Often the insurance agent calls this fact to the customer's attention and recommends the installation of a system. All sprinkler devices must be inspected and approved by the Underwriters' Laboratories or the Factory Mutual Association in order to qualify for reduced insurance rates. Such testing results in uniform standards of performance and thus all sprinkler systems are basically the same. Traditionally there has been no direct relationship between insurance companies and sprinkler companies, but, in October 1968, the Insurance Company of North America (INA) purchased the Star Sprinkler Company, one of the larger manufacturers. As noted above, ITT proposes to acquire the Hartford Fire Insurance Company as well as Grinnell.

B. Pipe Hangers

Pipe hangers are devices for supporting piping. There are hundreds of different types of hangers, depending on the size and weight of the pipe to be suspended and the material from which the support is to hang. Hangers vary from single U-shaped pieces of wire to complex suspension systems for power piping. Total sales of pipe hangers, including power pipe hangers, in 1966 were $26 million. Grinnell is the largest of the nation's twelve pipe hanger manufacturers and had sales in 1966 of approximately $13 million or 50% of the market.

C. Power Pipe Hangers

Power pipe hangers are specialized variable spring or constant support hangers used in power piping systems. These hangers have a spring mechanism which moves when the pipe to which it is attached expands due to pressure or temperature. Such hangers sell for as much as $2,500 each. There are only four manufacturers of power pipe hangers. Total 1968 sales are estimated at $13 million, of which Grinnell had $5,970,000, or approximately 45% of the total.

D. Power Piping Systems

Power piping systems are installed in utility power generating plants and segments of the process industries, primarily chemical and paper. Metallurgical stability and resistance to expansion and other structural changes are the principal requirements of such systems. Only three companies, including Grinnell, manufacture power pipe hangers, prefabricate the piping, and install the complete system. Several other companies do fabrication and installation. Grinnell had total power piping sales of $52 million in 1967 and $28 million in 1968. While total industry revenues are unavailable, Grinnell is believed to be the largest factor in the industry.

ADVERSE COMPETITIVE EFFECTS

A. Entrenchment of Grinnell Through Reciprocity and Other Foreclosure

Each of the markets in which Grinnell is important is dominated by relatively few firms, with the top three companies accounting for over 50% of the total industry sales. Grinnell is already the largest company in each of these markets and the resultant combination with ITT will create an extremely wide disparity in size and market power between it and the largest remaining firm in each of these fields.

As with the acquisition of Canteen, ITT's vast purchasing power throughout the economy will enable Grinnell, already a dominant firm in several concentrated markets, to benefit from reciprocity and reciprocity effect 1/ thus

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1/ "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm desiring to sell to another company to channel its purchases to that company.

further entrenching its position and increasing barriers to entry in these markets. The Supreme Court recognized the illegality of reciprocity resulting from mergers in F.T.C. v. Consolidated Foods Corporation, 380 U.S. 592, 595: "Reciprocity in trading as a result of an acquisition violates § 7 if the probability of a lessening of competition is shown." Since reciprocity is an "irrelevant and alien factor" which imposes entry and growth barriers to small single-product firms, it is "one of the congeries of anticompetitive practice at which the antitrust laws are aimed" (Consolidated Foods, supra, 380 U.S. at 594).

The creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect. As stated in United States v. Ingersoll-Rand Company, 218 F. Supp. 530, 532, affirmed 320 F.2d 509:

> . . . the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages of securing the goodwill of the possessor.

The extent of the danger from reciprocity and reciprocity effect depends upon the volume of a firm's purchases of goods and services. ITT's total annual purchases from all suppliers are a minimum of $550 million. ITT purchases annually $100,000 or more in goods or services from each of some 750 suppliers, including 99 of the top 200 corporations on the Fortune 500 list. In the case of more than 100 of these suppliers, ITT's purchases are $1 million or more annually. The industries from which it purchases more than a million dollars annually include automotive, foods, steel, aluminum, copper, tires, chemicals, oil, electrical and electronic equipment, home appliances, and lumber. These industries account for about one-third of the total United States expenditures for new plants and equipment, the very plants which offer the major

market for sprinkler systems and pipe hangers. ITT's substantial purchases from the industries erecting these new plants will increase Grinnell's ability to receive the sprinkler and pipe hanger business of these plants. 2/

In addition to foreclosure arising from reciprocity, the requirements for these products of ITT's own industrial and commercial construction will be foreclosed to competitors of Grinnell as a result of this acquisition. This vertical foreclosure will further contribute to the entrenchment of Grinnell as a result of its acquisition by ITT.

The greatest danger from reciprocity effect is in the automatic sprinkler system market. However, since pipe hangers are used in conjunction with sprinkler systems, any entrenchment in that market will also entrench Grinnell's position in pipe hangers. With respect to power piping systems, reciprocity effect may be less, especially in utility power generating plant construction. Nonetheless, this is a concentrated industry in which any entrenchment of a leading firm through its acquisition by a large diversified company creates serious competitive dangers.

2/ Most automatic sprinkler work is done on a job-by-job basis with the general contractor, rather than with the owner of the building under construction. However, Grinnell presently has a number of blanket contracts with major industrial firms whereby Grinnell does all of the sprinkler work for these companies' plants wherever located. The reciprocity power of ITT could result in an increase in the number of such blanket contracts, thereby foreclosing other sprinkler installers from a significant portion of the market.

B. Use of ITT's Insurance Capabilities to Promote Grinnell's Sales

As noted above, ITT has entered into an agreement of merger with the Hartford Fire Insurance Company, one of the nation's leading fire and casualty insurers. The combination of Grinnell and Hartford would enable ITT to utilize its insurance business to promote and increase the sale and installation of automatic sprinkler systems. 3/ This ability is another means by which this merger may further entrench Grinnell's already dominant position in this market.

Since all sprinkler systems are basically the same, the customer has little reason, other than price, to prefer one system over another. Indeed, it is common for insurance agents and sprinkler salesmen to work together in contacting prospective customers. At the very least, Hartford agents will be in a unique position to recommend Grinnell sprinkler systems and to give leads to Grinnell salesmen. In addition, purchasers desiring types of fire

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3/ Since the parties to the ITT-Hartford merger have stated that they intend to proceed, we have to assume for present purposes that the merger will be consummated. In any event, the acquisition of Grinnell, totally apart from any insurance relationship, is at least as anticompetitive as the Canteen acquisition.

and casualty insurance which may be relatively unprofitable and therefore hard to obtain may have an incentive to buy Grinnell systems in the hopes of obtaining the desired insurance. (This type of tying effect is similar to the danger presented by the recently abandoned First National City Bank - Chubb merger.) The consequence of all of these forces is that Grinnell, already the dominant firm in the sprinkler market, would be further entrenched in that position.

C. Triggering of Other Mergers

This acquisition could have a serious impact on the structure of the several industries involved. ITT is many times larger than any of the companies with which Grinnell competes. It seems inevitable that this acquisition will tend to trigger other mergers by competitors of Grinnell seeking to protect themselves from the impact of this acquisition or to obtain similar competitive advantages. This is especially true if the Hartford-Grinnell relationship is established. In fact, some of the competitors of Grinnell have already indicated that such a combination could drastically alter their operations and force them to sell out to other insurance companies. This trend had already begun with the INA-Star Sprinkler merger.

Finally, this acquisition will further the current trend of acquisitions of dominant firms in concentrated markets by very large companies. This trend has substantially contributed to the rising level of concentration in the economy. The effect has been to place a steadily increasing percentage of the nation's industrial wealth in the hands of a few giant companies. This trend also increases actual and potential customer supplier relationships among leading firms in concentrated markets, thus diminishing the vigor of competition.

VENUE

We propose to file separate cases against the Grinnell and Hartford acquisitions, but in the same jurisdiction, in the expectation that the cases can be consolidated for trial.

CONCLUSION

For the reasons indicated, I recommend that the attached complaint be approved.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Approved:

Louis O. Kleindienst

Date: 7/25/69

3. During 1969, 1970 and 1971, Harold S. Geneen, President of ITT, met on numerous occasions with White House staff members, other Administration officials and members of both houses of Congress to discuss various matters, including international monetary policy, the Office of Foreign Direct Investment policy, antitrust policy, balance of payments, revenue sharing and expropriation by foreign governments. During the summer of 1969 Geneen sought a personal meeting with the President to discuss the ITT antitrust cases. His request was denied because the President's advisers thought that such a meeting was inappropriate.

		Page
3.1	Harold Geneen testimony, 2 KCH 776-80.....	132
3.2	Memorandum from Hugh Sloan to John Ehrlichman, June 30, 1969 (received from White House).....	137
3.3	Memorandum from Dwight Chapin to Peter Flanigan, July 16, 1969 (received from White House).....	138
3.4	White House "White Paper," The ITT Anti-Trust Decision, January 8, 1974, 1, 3.....	139

Senator KENNEDY. I think, if the Senator will yield just on that point, I think you indicated on your list that you called Mr. Flanigan; didn't you?

Mr. GENEEN. Yes. We submitted a list this morning, Senator, covering all the people that were covered in that release and the subject matters. I think the preliminary list you had earlier did not.

Senator KENNEDY. I think on the list that was provided, it indicated in your release, that in February 1971, you talked with Mr. Flanigan?

Mr. GENEEN. That is correct.

Senator KENNEDY. That was the last question of the Senator.

Senator HRUSKA. That was not the last question.

Senator KENNEDY. That was the last question of Senator Ervin.

Mr. GENEEN. Let me see if I can correct it.

There was a group meeting and there were about 25 people there, not on the subject of antitrust. It was a luncheon. It was on the subject, originally, on the subject of revenue sharing and reorganization of Government and a presentation to a number of business people. It was followed by a lunch, and we sat in the lunch, and in the lunch we were talking generally, speaking about business and Government regulations in general. Now, I included it because it gets in this general area, but I think any discussion per se of antitrust probably with the two or three comments——

Senator COOK. Would the Senator from North Carolina yield?

Senator ERVIN. Yes.

Senator COOK. I think what the Senator has in mind was the testimony of Mr. Rohatyn, a director of the company, who attended two meetings, one in the morning and one in the afternoon at the Attorney General's office relative to his position as chairman of the committee of the New York Stock Exchange, where Mr. Peter Flanigan was in attendance and also the president of the New York Stock Exchange, the president of the American Stock Exchange. It was also in regard to Mr. Ross Perot and the Du Pont brokerage firm.

Senator ERVIN. I want to thank the Senator from Kentucky for straightening me out on that. I have not been able to attend all the hearings and I have read some newspaper accounts and I am confused perhaps. I take it, Mr. Geneen, that you are testifying that never, at any time, on any occasion, under any circumstances, did you ever talk to Mr. Flanigan about antitrust laws or about these antitrust suits?

Mr. GENEEN. I don't recall any. I remember the luncheon; that is what I was speaking of.

Senator ERVIN. That is all.

The CHAIRMAN. Hugh?

Senator SCOTT. No questions; reserved.

Senator KENNEDY. I planned to go into some other areas but in your release, page 2 of the March 13 release, it says, "According to the spokesman, Mr. Geneen also registered his views on the Administration's policy"—I imagine that is antitrust policy—"with White House staff members Dr. Arthur Burns, Charles Colson, John Ehrlichman and Peter Flanigan. . . ." That is what I understood Senator Ervin asked you.

(The ITT press release referred to follows:)

INTERNATIONAL TELEPHONE & TELEGRAPH CORP.,
Washington, D.C., March 13, 1972.

ITT DETAILS MEETINGS WITH GOVERNMENT OFFICIALS

New York, March 13—In response to questions concerning meetings between high ranking government Administration officials and Mr. Harold S. Geneen, chairman and president of International Telephone and Telegraph Corporation, a spokesman for ITT today stated that in the three years since the new policy of the Antitrust Division has been followed, Mr. Geneen has talked to many members of Congress, the Government, the public, the Bar, shareholders and others on what he felt was the serious impact of this policy on the national interest, as well as on all of American industry.

The spokesman said that Mr. Geneen felt that changes in antitrust law should be made in Congress where hearings on all aspects of the national interest could be held before new legislation was enacted.

The spokesman continued, "Mr. Geneen's right to place his views before any an all members of the government involved in national policy is a constitutional right of all American citizens. It is the duty of any businessman or citizen to express his views when he feels he has a wrong that needs redress."

"Constitutional rights of businessmen," the spokesman said, "are entitled to as much respect and protection as the First Amendment rights are to a free press."

The spokesman said that Mr. Geneen's range of contacts included former Attorney General John N. Mitchell and Senators Philip A. Hart and Vance Hartke, as well as Chairman Emanuel Celler of the House Committee on the Judiciary and members of that committee, including Representatives Peter A. Rodino and Jack Brooks.

According to the spokesman, Mr. Geneen also registered his views on the Administration's policy with White House staff members Dr. Arthur Burns, Charles Colson, John Ehrlichman and Peter Flanigan; with Paul W. McCracken, then chairman of the Council of Economic Advisers; with former Commerce Secretary Maurice Stans; with former Treasury Secretary David Kennedy; with Treasury Secretary John B. Connally; with Peter G. Peterson, when he was the White House advisor on international economic policy; and with other members of Congress including Senators Inouye (D-Hawaii), Hart (D-Mich.), Hartke (D-Ind.), McClellan (D-Ark.), Byrd (D-W.Va.), and Percy (R-Ill.), Representatives Ford (R-Mich.), Rodino (D-N.J.) Brooks (D-Texas), Wilson (R-Calif.), Celler (D-N.Y.), Boggs (D-La.) and former Representative MacGregor (R-Minn.).

ITT said it considers the consent decrees agreed to with the Justice Department to be extremely severe. The company had won two of the antitrust cases in lower courts and therefore felt its views about the merits of its position were shared by others responsible for antitrust interpretation.

Senator KENNEDY. Did you discuss antitrust policy with Mr. Flanigan—the ITT case?

Mr. GENEEN. This is a pretty broad view Senator. This was a luncheon. At the luncheon we expressed the whole attitude of business and Government. I touched on our attitude but I didn't touch on attitude and policy——

Senator KENNEDY. What did you mean when you talked about, in your release, registering your views on administration policy with Mr. Flanigan? Would you specify?

Mr. GENEEN. Well, I think the only thing I registered—there was a fairly sizable luncheon meeting and I expressed the view that the relationship of business to Government was certainly being increased—"improved" is the right word. McCracken was part of that discussion and some 20 other people, I think, and my comments were that I I didn't think we were going to be able to improve our relations unless we did something about it and my own feeling was that we had to have better relationships between business and Government in these various areas; and that is the general discussion that took place.

Now, that was a discussion that took place under the auspices of Mr. Flanigan who called us all down for this meeting and I don't recall any other details of the meeting, but, substantially, I didn't hesitate to record these general views.

Senator KENNEDY. Who else was at that meeting?

Mr. GENEEN. I don't know, but I suppose they would have a list of them. They were all outside people. Well, let me say Mr. McCracken was at the meeting.

Senator KENNEDY. Who called the meeting?

Mr. GENEEN. I was invited to the meeting and I believe the invitation came from Mr. Flanagan.

Senator KENNEDY. What was the invitation for? What type of meeting? What did he do, just call you and say, "We are going to talk about the business climate," or talk about the antitrust policy?

Mr. GENEEN. No. I got a notice of the meeting from the Washington office.

Senator KENNEDY. Which Washington office?

Mr. GENEEN. Our Washington office.

Senator KENNEDY. Your ITT office?

Mr. GENEEN. That is correct and as I recall, the presentation of the the economic situation by Mr. McCracken. There were some comments made by Assistant Secretary Packard about the military situation and more about the budget, basically; and I can't remember what other general comments there were but the main thrust of it, as I understood it, was to explain the new program, the revenue sharing and for the reorganization of the Government, as I recall. We each got a pretty thick folder on each of these subjects, and we adjourned and went to lunch. The lunch was much more informal and I think I sat next to McCracken and we got into the general matters of economy—that was the thing to do with Mr. McCracken—and some of the things we could do, let's say, to improve our competitive ability, and, basically, the relationship of business and Government. I discussed my views on that.

Senator KENNEDY. Did you talk about antitrust policy?

Mr. GENEEN. I don't think I touched on it, except, you might say, in a very restrained way. This was a group of people and I don't think it was an area that we would go into very great detail.

Senator KENNEDY. Did you ever have any conversation with Mr. Flanigan other than about antitrust policy?

Mr. GENEEN. No; I don't think so. I don't think I can recall ever talking to him about it.

Senator KENNEDY. Did you ever have any correspondence or phone conversation with Mr. Flanigan?

Mr. GENEEN. No, not to my knowledge.

Senator KENNEDY. The reason I ask, Mr. Geneen, is because, you know, in this release you give ITT's detailed list of meetings with Government officials about antitrust law and it indicates that on the press release, and then it mentions Mr. Flanigan's name on this. As I gather from what you are saying here, you just attended a general meeting that was called by Mr. Flanigan or he chaired a meeting that was concerning the general business climate?

Mr. GENEEN. That is correct, and I expressed some general views.

Senator KENNEDY. Did you say you had an additional list here?

Mr. GENEEN. No; I think we put in a more accurate—I wouldn't say accurate—I checked out some of the dates alongside of each of the names I put down the subject matter of what we talked about.

Senator KENNEDY. You had in this list the date of February, 1971. Do you have any—do you know when that date was in February, 1971?

Mr. GENEEN. I don't have any better—have you got the final list, Senator, or the earlier one?

Senator KENNEDY. Well, there are so many lists and memorandums here that I don't know which it is.

Mr. GENEEN. The one that came in this morning says "Schedule A."

Senator KENNEDY. I haven't gotten that one this morning.

Mr. GILBERT. No. Excuse me, Senator, in response to the written request from the committee, we did prepare, in response to item 1, we did prepare a revised and corrected list of all those meetings which we have.

Senator KENNEDY. Can we have that?

Mr. GILBERT. Certainly.

Senator COOK. We would all like it if we could have it.

Senator ERVIN. It has been called to my attention by a member of the staff that none of these lists and exhibits they are referring to are in the record and I would suggest that it be placed in the record so people can understand what the questions are about.

(Letter from ITT dated March 28, 1972 and schedule A follow:)

INTERNATIONAL TELEPHONE & TELEGRAPH CORP.,
New York, N.Y., March 28, 1972.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: In response to a request by the Committee made during the course of my testimony during the week of March 13, I attach hereto, as Schedule A, a revised list of the visits which I had with government officials about which I was questioned (Tr. 1205-6).

This schedule reflects my best present recollection as to the persons visited, the dates on which those visits were made, and the subject matters discussed. It is intended to be substituted for the list submitted on March 24, 1972, by counsel, Skadden, Arps, Slate, Meagher & Flom, which I did not have an opportunity to personally review prior to submission.

Sincerely,

H. S. GENEEN.

—

SCHEDULE A

Late 1971:

Sen. Daniel K. Inouye—Government-Business Relations.

Sec. John Connally—Internat'l Monetary Policy, OFDI Policy, Foreign Investment Policy, Expropriation Policy.

Mr. Charles Colson—OFDI Policy.

Mr. James Lynn—OFDI Policy.

Mid 1971:

Mr. Peter Peterson—Internat'l Monetary Policy, Foreign Investment Policy, Internat'l Trade Policy, OFDI Policy, Expropriation Policy. A second meeting which was a group meeting on International Trade Policy and Economic Planning.

Mr. Charles Colson—OFDI Policy.

Rep. Bob Wilson—Review of Speech on Modular Housing given by Rep. Wilson in New York, personal fishing trip.

Feb. 1971: Mr. Peter Flanigan—Group meeting and lunch on Revenue Sharing and Reorganization of Government.
Before Feb. 1971: Sec. David Kennedy—Antitrust Policy and Balance of Payments Policy.
Early 1971: Chairman Paul McCracken—Antitrust Policy and Balance of Payments Policy.
April 1971:
Mr. Peter Peterson—Antitrust Policy, Balance of Payments Policy, International Trade Policy, Productivity, Expropriation Policy.
Sec. John Connally—Antitrust Policy, Foreign Investment and Balance of Payments Policy.
Aug. 1970:
Atty. Gen. John Mitchell—Antitrust Policy.
Mr. John Erlichman—Antitrust Policy and Balance of Payments Policy.
June 1970:
Sen. Sam J. Ervin, Jr.—Bill for Expediting Act Revision.
Sen. Philip A. Hart—Conglomerate Policy, Celler Committee Hearings, Bill on Expediting Act Revision, Possible Hearings Senate Sub-Committee on Antitrust.
Mid 1970: Sen. Vance Hartke—Conglomerate Policy, Antitrust Policy.
Early 1970:
Rep. Emanuel Celler—Conglomerate Policy and Hearings.
Sen. Charles Percy—Antitrust Policy and other.
Sec. Maurice Stans—Government-Business Relations, Antitrust Policy.
Before Feb. 1970: Mr. Arthur Burns—Antitrust Policy and Balance of Payments Policy.
Late 1969:
Rep. Peter Rodino—Celler Committee Hearings, Antitrust Policy and Conglomerate Policy.
Rep. Jack Brooks—Celler Committee Hearings, Antitrust Policy and Conglomerate Policy.
Rep. Clark MacGregor—Celler Committee Hearings, Antitrust Policy and Balance of Payments Policy.
Rep. Hale Boggs—Antitrust Policy, Balance of Payments Policy, Conglomerate Policy.
Rep. Gerald R. Ford—Antitrust Policy, Balance of Payments Policy, Conglomerate Policy.
Sen. Robert Byrd—Antitrust Policy, Balance of Payments Policy, Conglomerate Policy.
Sen. John L. McClellan—Antitrust Policy, Conglomerate Policy, Balance of Payments Policy.
Early 1969: Sec. Maurice Stans—Antitrust Policy.

Senator KENNEDY. You see, Mr. Geneen, when you mention that you saw Mr. Flanigan at the luncheon, you have different dates down here for this meeting with Mr. Flanigan from what you have for Mr. McCracken, which is why—as I say, I don't want to spend a lot of time on this particular item.

Mr. GENEEN. I understand but I was going to explain that, Senator. I made a call to Mr. McCracken at his office. That is the best date I can remember.

Senator KENNEDY. How are we expected to know whether these people you indicated on the preliminary list were people who attended general meetings?

Mr. GENEEN. Well, I think the supplementary list of group meetings, the grouy meetng and luncheon and Mr. McCracken as a specific call on purpose.

Senator KENNEDY. I would like to come back when I have had a chance to go over the list.

Mr. GENEEN. Yes.

Senator KENNEDY. In your last appearance here, you provided us with an interim report on the shredding operations.

3.2 HUGH SLOAN MEMORANDUM, JUNE 30, 1969

June 30, 1969

TO: JOHN EHRLICHMAN

FROM: HUGH SLOAN

For your consideration.

Letter from:

Loren M. Berry
L. M. Berry and Company
P. O. Box 6000
Dayton, Ohio 45401

003856

Enclosing letter to Secretary Stans from:

Mr. Harold S. Geneen
Chairman and President
International Telephone and Telegraph Co.
320 Park Avenue
New York, New York 10022

Mr. Geneen wants to talk to President about balance of payments.

EXHIBIT #69-1

July 16, 1969
Wednesday - 3:15 p.m.

MEMORANDUM FOR MR. PETER FLANIGAN

SUBJECT: Proposed Appointment with the President for Harold Geneen of IT&T

In accordance with the recommendations that you set forth in your memorandum (attached), we have not scheduled an appointment for Harold Geneen of IT&T.

Since you are familiar with all the matters relating to the subject matter, I would like to suggest that you talk to Bryce Harlow and see if it is agreeable with him for you to call Wilson and explain why it would be inappropriate for the President to see Geneen.

003855

DWIGHT L. CHAPIN

DLC:ny

FOR IMMEDIATE RELEASE JANUARY 8, 1974

Office of the White House Press Secretary

THE WHITE HOUSE

The ITT Anti-Trust Decision

In the thousands of pages of testimony and analysis regarding the ITT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution from a subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation.

That charge is totally without foundation:

-- The President originally acted in the case because he wanted to avoid a Supreme Court ruling that would permit antitrust suits to be brought against large American companies simply on the basis of their size. He did not direct the settlement or participate in the settlement negotiations directly or indirectly. The only action taken by the President was a telephoned instruction on April 19, 1971 to drop a pending appeal in one of the ITT cases. He rescinded that instruction two days later.

-- The actual settlement of the ITT case, while avoiding a Supreme Court ruling, caused the corporation to undertake the largest single divestiture in corporate history. The company was forced to divest itself of subsidiaries with some $1 billion in annual sales, and its acquisitions were restricted for a period of 10 years.

-- The President was unaware of any commitment by ITT to make a contribution toward expenses of the Republican National Convention at the time he took action on the antitrust case. In fact, the President's antitrust actions took place entirely in April of 1971 -- several weeks before the ITT pledge was even made.

I. President's Interest in Anti-Trust Policy

Mr. Nixon made it clear during his 1968 campaign for the Presidency that he stood for an antitrust policy which would balance the goals of free competition in the marketplace against the avoidance of unnecessary government interference with free enterprise. One of Mr. Nixon's major antitrust concerns in that campaign was the Government's treatment of conglomerate mergers. Conglomerates had become an important factor in the American economy during the 1960's, and despite

(OVER)

MORE

> '...the Japanese government sees itself as a partner with business in facilitating economic growth...The situation is far different from that in the United States -- where...major efforts of the government are devoted not to growth and stimulation but to restraint and regulation of business and labor...'

This view, along with a great deal of other data on foreign trade, was communicated to the President by Mr. Peterson on April 6, 1971 -- only a few days before the President intervened in the ITT matter.

The President and his advisors, (but not Attorney General Mitchell, who had disqualified himself on matters related to ITT) were thus seriously concerned about two aspects of anti-trust policy which would eventually bear on the ITT matter: 1) the policy of attacking bigness per se and whether such policy had any economic justification, and 2) the need to prevent misguided antitrust attacks upon U. S. companies in competition with large foreign industrial entities.

II. Background on the ITT Litigation

The Justice Department in 1969 initiated civil litigation against the International Telephone and Telegraph Co., a major "conglomerate," for alleged violations of the antitrust laws. The allegations involved acquisitions by ITT of the Grinnell Corporation, the Hartford Fire Insurance Company, and the Canteen Corporation. These were only the latest and among the largest of a series of acquisitions made by ITT in the years since 1963, a period in which favorable tax laws, among other things, made acquisitions popular.

Under Assistant Attorney General McLaren, the Antitrust Division of the Justice Department was concerned with the implementation of an antitrust policy which attacked the general merger trend not only because the effect of the corporate growth 'may be substantially to lessen competition' conduct clearly proscribed by the antitrust laws, but also because of the economic concentration itself.

Other experts, including many of the President's advisors, did not see the role of antitrust law in such all-encompassing terms. They believed that to use the law of antitrust to achieve political and economic aims beyond prevention of restraint of trade was unsound. If there were dangers such as Mr. McLaren and his colleagues feared from conglomerates, President Nixon and his advisors, along with other experts, preferred solving them through legislation.

Executives of ITT were also concerned about the Justice Department action, and talked with various administration officials to learn their views. The chief executive officer of ITT, Harold Geneen, was sufficiently concerned that he attempted to talk to the President personally about these issues in the summer of 1969. The President's advisors thought that such a meeting was not appropriate, and the meeting was not held.

4. During September 1969 Colonel James Hughes, Military Assistant to the President, spoke with Dita Beard, an ITT lobbyist, about the pending antitrust suit. Hughes reported on the conversation in a memorandum to Ehrlichman dated September 19, 1969.

Page

4.1 Memorandum from James Hughes to John Ehrlichman, September 19, 1969 (received from White House)..... 142

September 19, 1969

MEMORANDUM FOR JOHN EHRLICHMAN

Carl Wallace asked me to call Deta Beard since I have know her personally for a number of years, in an effort to relieve her pressure on Secretary Laird reference the IT&T mergers. I did this and explained to her that this was out of my element, but since she was an old friend, I would pass on her request to the proper people.

004038

Her pitch was long and involved, but basically boiled down to this: IT&T has not been able to discuss with McClaren the rationale behind the law suit. The Attorney General has disassociated himself from the case because of his law firm's interest in a subsidy of IT&T. The IT&T position is that they have done nothing wrong and in particular have violated no policy of this administration. On the emotional side, Deta cites a heavy financial support given by IT&T to the President's election.

In short, she requested that if the injunction were not granted by Monday, that Justice drop the entire matter.

I repeat, my role was simply a hand holding one and no commitment whatsoever was made. If you have a salving comment I'll pass it on. If not, I'll just ride it out.

COLONEL JAMES D. HUGHES

JDH:sas

5. In August 1970 officials and representatives of ITT held five meetings with Administration officials, including Vice President Spiro Agnew, Secretary of Commerce Maurice Stans, Assistant Attorney General McLaren and White House counsel John Ehrlichman and Charles Colson to discuss antitrust matters in general and the ITT antitrust litigation in particular. In another meeting, Geneen and Attorney General Mitchell met to discuss overall antitrust policy with respect to conglomerates. At these meetings and in subsequent letters and memoranda ITT officials sought to persuade Administration officials that McLaren's antitrust views, as reflected in his conduct of the ITT litigation, were ill-advised and inconsistent with the Administration's antitrust policy.

Page

5.1 Memorandum from Tod Hullin to John Ehrlichman, August 4, 1970 (received from White House).....145

5.2 Letter from Richard McLaren to Tod Hullin, July 30, 1970, with attached memorandum from Richard McLaren to John Ehrlichman (received from White House).....147

5.3 Memorandum from Richard McLaren to Tod Hullin, August 3, 1970, with attachments (received from White House).....153

5.4 Letter from "Ned" [Edward Gerrity] to Vice President Spiro Agnew, August 7, 1970, with attached memorandum (received from House Interstate and Foreign Commerce Committee).....163

5.5 Memorandum from John Poole to Files, August 7, 1970 (received from Department of Justice).....166

5.6 Memorandum from Tod Hullin to Richard McLaren, August 10, 1970 (received from White House).....168

Page

5.7 Letter from Thomas Casey to Charles Colson, August 7, 1970, with attachment (received from White House)..... 169

5.8 Memorandum from Charles Colson to John Ehrlichman, August 10, 1970 (received from White House)..... 177

5.9 Memorandum from Tod Hullin to John Mitchell, August 11, 1970 (received from White House)..... 178

5.10 John Mitchell testimony, 2 KCH 540, 542-43, 546, 549-50..... 179

5.11 Memorandum from Edward Gerrity to John Ryan, August 10, 1970 (received from Michael Mitchell)..... 185

5.12 Memorandum from John Ryan to William Merriam, August 24, 1970, House Interstate and Foreign Commerce Committee, Special Subcommittee on Investigations, Hearings on Legislative Oversight of SEC: Inquiry into Withholding and Transfer of Agency Files Pertaining to ITT, 154-56..... 186

EXECUTIVE
FG 6-11-1/Ehrlichman, J.
JL 2-1
FG 17
McLaren, Richard

THE WHITE HOUSE
WASHINGTON

August 4, 1970

WH

MEMORANDUM FOR JOHN EHRLICHMAN

SUBJECT: Meeting with Harold Geneen, President, ITT, and E. J. Gerrity and William Merriam of ITT August 4, 1970 - 11:30 a.m.

003944

BACKGROUND

Mr. Geneen was one of several businessmen to have dinner with the President on board the SEQUOIA on July 17, 1970. Following this dinner, his office called and requested a meeting with you. Chuck Colson has tried to handle this, but Geneen insists on seeing you.

POINTS OF DISCUSSION

A. ITT's antitrust position. Attached at Tab A is a memorandum from Richard McLaren in which he summarizes the three conglomerate merger cases which have been filed against ITT.

B. Foreign direct investments and balance of payments. Chuck Colson has all the information on this subject and will brief you at 11 a.m. prior to your meeting with Geneen.

C. Network programming. You recently indicated that Geneen may bring up the subject of network programming and a recent ruling by the FCC. Attached at Tab B is a background paper on the subject provided by McLaren.

WH

WH

D. ITT's attempted takeover of the ABC network in 1967. A background paper outlining ITT's attempted takeover of ABC is ttached at Tab C. This may be useful in determining the origin of Geneen's interest in network programming.

Tod R. Hullin

003945

WH

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

WH

Mr. Tod R. Hullin
Administrative Assistant to
John D. Ehrlichman
The White House
1600 Pennsylvania Avenue, N. W.
Washington, D. C. 20500

003948

Dear Mr. Hullin:

In response to your memorandum of July 21, 1970, I am enclosing herewith a background memorandum for Mr. Ehrlichman to use in preparation for his meeting with Mr. Geneen.

Sincerely yours,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

Department of Justice
Washington, D.C. 20530

MEMORANDUM FOR JOHN D. EHRLICHMAN

The following is background information for your meeting with Mr. Geneen of ITT, on August 4, 1970.

The Department of Justice has filed three conglomerate merger cases against ITT. These cases may be summarized as follows:

(1) United States v. International Telephone & Telegraph Corporation and Canteen Corporation: This suit is pending in the United States District Court, Northern District of Illinois, in Chicago.

ITT is the nation's 12th largest firm with 1967 revenues of $3.6 billion. It is a rapidly growing company, with much of its recent growth resulting from mergers and acquisitions. ITT purchases in excess of $550 million of goods from various domestic suppliers, with its actual and potential suppliers employing about one-third of the nation's industrial labor force.

Canteen, with 1968 revenues of $322 million, is one of the few nationwide vending organizations and a leader among companies providing dining services for industrial plants.

The complaint alleges that competitors of Canteen may be foreclosed from competing for the vending and employee feeding requirements of actual or potential suppliers to ITT, as well as the requirements of industrial organizations owned by ITT and its subsidiaries.

Trial of this case is set for November 9, 1970.

(2) United States v. International Telephone & Telegraph Corporation and The Hartford Fire Insurance Co.:

This suit is pending in the United States District Court for the District of Connecticut, in New Haven.

Hartford is a leading writer of property and liability insurance and ranks 17th among the nation's property and liability insurance companies. In 1968 it had premium receipts of $968 million, net income of $53.3 million, and consolidated assets of $1.89 billion.

ITT also engages in the life insurance business, reaching a nationwide level of $1 billion. It is also a large purchaser of insurance.

003950

The complaint alleges that actual and potential competition between the two firms will be diminished and that the merger will foreclose competitors of Hartford from competing for the insurance purchases of ITT and ITT's customers, increase the power of ITT and Hartford to benefit from reciprocity effect in selling insurance, and trigger other mergers by companies seeking to protect themselves from the impact of this acquisition or to obtain similar competitive advantages.

On October 21, 1969, the Court denied the Government's application for a preliminary injunction in this case, but entered a comprehensive "hold-separate" order. Trial of this case is set for April 19, 1971.

(3) United States v. International Telephone & Telegraph Corporation and Grinnell Corporation: This suit is pending in the United States District Court in the District of Connecticut in New Haven.

Grinnell is the 268th largest industrial corporation in the United States, with 1968 sales of $341 million, net income of $14 million, and assets of $184 million. Grinnell is the largest manufacturer and installer of automatic sprinkler fire protection systems in the United States. It is also a leading manufacturer of plumbing and piping hardware.

The complaint alleges that the merger will entrench Grinnell's already leading position in several concentrated markets, including the manufacture and installation of automatic sprinkler systems.

The complaint also alleges that the power of ITT and Grinnell to employ reciprocity and benefit from reciprocity effect will be substantially increased and the markets for Grinnell's competitors will be correspondingly foreclosed. Thus, the merger will raise barriers to entry, discourage smaller firms from competition in those markets, and trigger other mergers by competitors of Grinnell seeking to protect themselves from the impact of this acquisition. 00395j

The acquisition of both Grinnell and Hartford will enable ITT to utilize and benefit from its insurance business in promoting and increasing the sale and installation of Grinnell automatic sprinkler systems.

On October 21, 1969, the Court denied the Government's application for a preliminary injunction in this case, but entered a comprehensive "hold-separate" order. Trial of this case is set for September 15, 1970.

* * *

The anticompetitive effects alleged in these three cases do not represent novel or untested antitrust theory.

The doctrine of potential competition was clearly spelled out by the Supreme Court in United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964); Federal Trade Commission v. Procter & Gamble Co., 386 U.S. 568 (1967); and United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964). Simarily, the Court held, in Federal Trade Commission v. Consolidated Foods Corporation, 380 U.S. 592 (1965), that reciprocity was an irrelevant and alien factor intruding into the choice of competing products and, at the very least, giving the favored firm a prior claim on the business where its price was no higher than that of a competitor.

The fact that a merger might entrench a leading firm's position was clearly recognized in the Procter &

Gamble case and in General Foods Corp. v. Federal Trade Commission, 386 F.2d 936 (3d Cir. 1967), cert. denied, 391 U.S. 919 (1968). And finally, the illegality of a merger which is likely to trigger other mergers and give impetus to further concentration is set forth in the General Foods case and in Brown Shoe Co. v. United States, 370 U.S. 294 (1962).

Last winter, the attempted takeover of Allis-Chalmers by White Consolidated was enjoined by the Third Circuit on reciprocity grounds, and certiorari was denied. On June 18, 1970, a unanimous Federal Trade Commission ruled that the acquisition of the Fram Corporation by The Bendix Corporation violated Section 7 of the Clayton Act by substantially lessening competition through elimination of the potential competition of Bendix in the filters market. These decisions, based upon the same anticompetitive effects on which our challenges to the three ITT acquisitions are based, lend further support to our cases.

* * *

You should also know that before ITT made these acquisitions, its counsel was advised of our intention to sue. ITT had "out clauses" in its contracts, but chose to proceed with the acquisitions and litigate. Since the cases were filed, I have discussed settlement with representatives of ITT. Briefly, I offered to settle on a basis which would involve ITT's agreement to divest itself of Canteen Corporation, and not to go through with the then pending acquisition of Hartford Fire Insurance Company, but permit ITT to keep Grinnell. (In addition, the Department would desire a consent order against further large acquisitions by ITT and against the practice of reciprocity by ITT.)

The three cases against ITT are extremely important to our program of maintaining a competitive market structure. I have every expectation that we

will ultimately prevail in these cases, thus obviating what probably would be rather inflexible legislation in this area by the Congress.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

003953

AUG 4 1970

ASSISTANT ATTORNEY GENERAL
WASHINGTON

RICHARD W. McLAREN

August 3, 1970

Memorandum for:

TOD R. HULLIN
Administrative Assistant to Mr. Erlichman

Re: Erlichman-Geneen Meeting 003946

In accordance with our telephone conversation last week, we have worked up memoranda concerning (1) the proceedings arising out of ITT's attempted take-over of the ABC network in 1967, and (2) the current status of the network programming proceeding in the FCC.

If there is any further information we can give you, please feel free to call upon us.

I would appreciate a call or a note after the meeting giving me any information that you properly can relative to the antitrust aspects of the discussion.

AUG 10

August 3, 1970

ANTITRUST DIVISION MEMORANDUM
CONCERNING NETWORK PROGRAMMING
OF TELEVISION SHOWS

During the 1950s, independent program producers were a significant force in prime-time network programming of television shows. In 1957, for example, the independent producers accounted for about 80 percent of prime-time shows--40 percent sold to 50-100 advertisers who then purchased air time, and 40 percent sold directly to the networks themselves.

003955

The situation has changed drastically. Today, advertisers purchase time for spot ads in the networks' schedules, and do not purchase shows directly from independent producers. The "independent" producer today must make an arrangement with the network if he is to sell his product at all, and the networks often require the producer to surrender valuable syndication rights and profit shares in his product to get it on the air.

The reasons why advertisers have ceased to purchase programs from independent producers are disputed. Some suggest that the networks arbitrarily

refused to carry such shows, and thus compelled advertisers to deal directly with them. Others claim that the advertisers themselves came to feel that spot ads were more effective, and were unwilling to assume the increasing risks and costs of purchasing independently produced shows.

003956

During the 1950s, the Antitrust Division began an investigation of this matter. In 1959, while the Division still had the matter under study, the FCC opened a full inquiry into the subject and, as a result, the Department of Justice inquiry was deferred.

In May 1970, the FCC issued its long-awaited order, with the following major provisions:

1. After September 1971, the television networks may not engage in the business of syndicating programs (selling second-run showings) within the United States, or distributing programs outside the United States of which it is not the sole producer, or reserve the right to share in profits in connection with such domestic or foreign distribution.

2. After September 1970, no network may acquire any financial interest in any commercial use of a television program produced solely or in part by a person other than the network, except a license for network exhibition.

2

3. After September 1971, no television station in any of the top 50 markets having three or more commercial stations shall broadcast network programs for a total of more than three hours a day between the hours of 7 p.m. and 11 p.m. (exclusive of special news programs, on-the-spot coverage of news events, and political broadcasts by legally qualified candidates).

003957

The stated purposes of these rules are to multiply competitive sources of television programming by strengthening the financial base of the independent producers, and to stimulate a greater variety of programs, by opening up some prime time to non-network programs.

The Antitrust Division, in letters to the FCC while these rules were under consideration, essentially endorsed the new rules.

At the present time, the networks have petitioned the FCC to reconsider the rules, and the matter is now pending before the Commission. Chairman Burch and Commissioner Wells dissented from the adoption of these rules.

The Antitrust Division is currently awaiting the outcome of the FCC proceedings. If the FCC reverses its rule, the Division would seriously consider taking appropriate action. (We also have

under consideration the complaint of the Motion Picture Association that movie production by CBS and ABC, together with the relationships between the networks and major movie exhibitors, is exposing the movie industry to unfair competition.)

Since ITT's proposed acquisition of ABC has been abandoned, we are aware of no direct interest which ITT may have in this subject, unless it is again considering entry into this field.

- 003958

August 3, 1970

WH

THE ITT-ABC CASE (1967) - ISSUES INVOLVED

In 1967, ITT negotiated a contract to acquire the ABC television and radio networks. The Department of Justice intervened before the FCC to oppose the proposed merger (which required FCC approval). Extensive hearings were held in which the Department actively participated. In June 1967, the Commission approved the merger by a 4-3 vote. The Department then appealed the FCC's decision to the Court of Appeals for the District of Columbia Circuit. However, while the appeal was pending, ITT abandoned the merger, and the appeal was dismissed as moot.

603960

The Department's reasons for opposing the merger were as follows:

1. Competition. The proposed merger of ITT and ABC would have had a significant adverse effect on competition because (a) it would have foreclosed ITT's entry into broadcasting by other means and thus eliminated it as a potential independent entrant into network broadcasting; (b) it would have eliminated ITT as a substantial independent factor in the field of CATV, pay TV, and related activities; and (c) it would have eliminated ITT as a

source of communications technology independent of the existing networks.

(a) Potential Entry into Network Broadcasting. ITT was seriously and actively contemplating and investigating entry into television broadcasting prior to the merger agreement with ABC. There was evidence indicating that, absent the merger, ITT would have entered, and was highly likely to enter, television broadcasting on a sizable and substantial scale. Such activity would have provided a basis for entry into network broadcasting for a firm with ITT's resources.

(b) Potential Competition via CATV. ITT was engaged in a full-scale CATV effort in mid-1965. It constructed and controlled six substantial systems. Its officials, and consultants acting in its behalf, investigated a large number of potential CATV acquisitions, and development projects. If these efforts were carried out, and if CATV developed commercially, ITT would become a direct competitor of the existing networks in providing television programming to the public. It appeared that ITT's interest in these fields was terminated largely as a result of the ABC merger agreement.

(c) Other Potential Competition. The efforts which ITT was prepared to bring to bear in the fields of CATV and pay TV are only a part of the potential technological developments which could have had a significant competitive impact upon the structure of television broadcasting. In particular, various technological advances would increase the number of channels of access to the public and facilitate new entry into the network field. There are relatively few firms with the capabilities and resources of ITT in communications technology and in the development, engineering and operation of communications systems and equipment. The proposed merger would have foreclosed entry by ITT into broadcasting through greater reliance on UHF and its expansion in CATV or pay TV; it would thus have removed an important incentive for research and development in those areas.

2. ABC as an Independent Voice in Regulatory Proceedings. The Department argued that the proposed merger was also likely to have a detrimental effect on the public interest by eliminating ABC's independent voice in regulatory proceedings and in the consideration of other communications matters. For example, ABC had been a leading factor in making Domestic Satellite proposals in 1965.

3. Loss of Independence and Integrity in News. The Department urged that the proposed merger threatened to impair the integrity and independence of ABC's activities in the news, information and public affairs fields. ITT is a large diversified enterprise whose economic interests are closely related to political developments in countries throughout the world. It engages in frequent negotiations and close contacts with high officials of various governments, and relies upon intimate and confidential relations with them. Moreover, in the course of the ABC-ITT proceeding, ITT exhibited its readiness to interfere with the judgment of reporters of independent news media; specific testimony covered attempts of ITT executives to influence the reporting of the ABC-ITT proceeding by newspaper reporters of the leading dailies. Some of this testimony included statements by ITT officials that reporters should be concerned about potential economic consequences in reporting news and making editorial judgments.

C03963

For all the foregoing reasons, the Department argued that the proposed merger was likely to result in significant and substantial detriment to the public interest, including loss of competition. There appeared to be no substantial countervailing benefits.

WH

Parties' Justifications. The parties sought to justify the merger on the ground that ABC required substantial new capital (to be provided by ITT) in order to remain competitive with the other networks and to replace its obsolete production facilities. However, the evidence showed that ABC was already a strong and effective competitor, obtaining 31% of primetime revenues and 27% of overall network revenues, and that its alleged need for production facilities was overstated. Moreover, the evidence showed that such money as ABC needed could be obtained through traditional methods of financing.

003964

PERSONAL & CONFIDENTIAL

cc Ryan

August 7, 1970

The Honorable
Spiro T. Agnew

Ted:

I deeply appreciate your assistance concerning the attached memo. Our problem is to get to John the facts concerning McLaren's attitude because, as my memo indicates, McLaren seems to be running all by himself.

I think it is rather strange that he is more responsive to Phil Hart and Manny Celler than to the policy of the Administration.

After you read this, I would appreciate your reaction on how we should proceed.

Ned

PERSONAL & CONFIDENTIAL

MEMORANDUM

August 7, 1970

You will recall at our meeting on Tuesday I told you of our efforts to try and settle the three antitrust suits that Mr. McLaren has brought. Before we met, Hal had a very friendly session with John, whom, as you know, he admires greatly and in whom he has the greatest confidence. John made plain to him that the President was not opposed to mergers per se that he believed some mergers were good and that in no case had we been sued because "bigness is bad." Hal discussed this in detail because McLaren has said and in his complaints indicated strongly that bigness is bad. John made plain that was not the case. Hal said on that basis he was certain we could work out something. John said he would talk with McLaren and get back to Hal.

While you and I were at lunch, Hal and Bill Merriam, who runs our local office, met with Chuck Colson and John Ehrlichman, and Hal told them of his meeting with John. Ehrlichman said flatly that the President was not enforcing a bigness-is-bad policy and that the President had instructed the Justice Department along these lines. He supported strongly what John had told Hal. Again, Hal was encouraged. I learned the details of this meeting after our lunch.

Yesterday our outside counsel from Chicago, Ham Chaffetz, who represents us in the Canteen case vs. the Justice Department, had a pre-trial meeting with McLaren and his trial people. They reviewed the case, and Chaffetz said he was ready to settle since Justice really had no case, i.e., they could not show reciprocity, etc., and that all that was alleged was that ITT was getting too big. McLaren, ignoring the evidence, said that ITT must be stopped, that the merger movement must be stopped, etc., in effect saying he was running a campaign based on his own beliefs and he intended to prosecute diligently. It is quite plain that Mr. McLaren's approach to the entire merger movement in the United States is keyed into the present cases involving ITT. Therefore, it is equally plain that he feels that if a judgment is obtained against ITT in any of these cases then the merger movement in the United States will be stopped. His approach obviously becomes an emotional one regardless of fact.

It was plain that McLaren's views were not and are not consistent with those of the Attorney General and the White House. We are being pursued, contrary to what John told Hal, not on law but on theory bordering on the fanatic.

PERSONAL & CONFIDENTIAL

In his conversation with Hal, John agreed that the steam had gone out of the merger movement because of tax reform legislation, the new accounting principles and general developments in the economy. John agreed with Hal that there was no need for a "crusade" to halt the merger movement because of the reasons I have indicated above. It is plain, therefore, that McLaren is operating on a completely different basis from John and the White House. I believe it has reached the point where he is more concerned about his personal views than those of his superior or the President.

My question to you is, should we get this development back to John, so he is aware, and how do we do it? What is the best way? I would appreciate your help and advice.

PERSONAL & CONFIDENTIAL

Files
Corres.Unit
GAConnell
RWMcLaren
JWPoole
GMCohen
RLFerree
PHGoldberg
GANoe
Chrono
Hold

JWPoole:dmh

Files

August 7, 1970

FILE: 60-270-037-1

John W. Poole, Jr., Assistant Chief
General Litigation Section

United States v. International Telephone and Telegraph Corporation (Canteen): Conference with Defendant's Counsel

On August 6, 1970, Hammond Chaffetz and William Jentes of the Kirkland Ellis firm called on Mr. McLaren in Washington to discuss possible settlement or disposition of the captioned case. Gerald Connell and I were also present.

Mr. Chaffetz contended that the Government's evidence elicited so far is so weak that the case ought to be dropped. He and Mr. Jentes adverted among other things to what they described as the extremely small number of "reciprocity" incidents revealed in the recent depositions of the Government's proposed witnesses, Fishman, Walsh and Manthy. They mentioned also that of all the possible incidents which have cropped up in Canteen documents in only 10% of these instances has Canteen gotten business. Overall Mr. Jentes said that the incidents of reciprocity which the Government intends to prove are insignificant given the size of this industry.

Mr. Chaffetz also admitted that at one time Canteen had practiced reciprocity as "everyone" had practiced reciprocity because it was understood that it was legal if coercion was not used. He said that this was no longer the case and particularly in view of ITT's management it was unrealistic to expect Canteen to engage in reciprocity.

Mr. Chaffetz also asserted that ITT would only improve Canteen's operations and this would redound to the benefit of the industry as a whole. (Mr. Jentes hastened to add that the management improvements ITT would make were not of a sort which would be available only to large firms.)

Mr. McLaren stated his intention to pursue the case, pointing out that the reciprocity issue was only half the case; there was also a major issue of the trend toward concentration through mergers, a trend in which ITT has been a leader and a prime contributor and one which runs afoul of the concerns voiced in the legislative history of the Celler-Kefauver Act.

Mr. Chaffetz said that although he had not spoken to Mr. Geneen of ITT on the subject he thought that ITT might be willing to consider an injunction of some years duration against further acquisitions as a means of settling the pending antitrust cases. He also stated that if the facts warranted it, ITT would be willing to settle the Canteen case on the entry of an order along the lines of that entered against U.S. Steel. Mr. McLaren indicated that he felt that divestiture was the proper remedy here.

Mr. Chaffetz asked whether this was regarded as a "test case" and Mr. McLaren challenged that characterization, pointing out that this was one of a group of cases where the grounds for Government suit had been clearly described to the proposed defendant before suit was brought.

EXECUTIVE

FBI-11-Ehrlichman, J.

August 10, 1970

MEMORANDUM

FOR RICHARD McLAREN

RE: Ehrlichman's meeting with Mr. Geneen, ITT

I asked Mr. Ehrlichman is there was anything specifically discussed in this meeting of which you should be informed.

003737

He indicated that there was nothing of significance that needed to be passed along; however, he did indicate that he had discussed some of the content of this meeting with the Attorney General. Perhaps the Attorney General could give you more specific guidance.

Tod R. Hullin
Administrative Assistant to
John D. Ehrlichman

5.7 THOMAS CASEY LETTER, AUGUST 7, 1970 WITH ATTACHMENT

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

WASHINGTON OFFICE

1707 L STREET, N.W., WASHINGTON, D.C. 20036

CABLE ADDRESS - INTELCO - WASHINGTON

August 7, 1970

Mr. Charles Colson
Special Counsel to the President
1600 Pennsylvania Avenue, N.W.
Washington, D. C.

003794

Dear Chuck:

Mr. Geneen has asked me to write to you and express his appreciation for the extremely cooperative response and interest you and Mr. Ehrlichman expressed in regard to ITT's areas of concern during his recent meeting.

He also asked me to forward to you excerpts from the "Stipulated Statement of Facts" recently filed by the Department of Justice in the LTV - Jones & Laughlin case. After you have reviewed these excerpts, I am sure you will realize his concern.

During his meeting with Attorney General Mitchell, Mr. Geneen and the Attorney General both agreed that because of the recent changes in the tax law, the decision of the Accounting Principles Board and the depressed state of the stock market and economy, the merger wave was over and we would not see such happenings again. The Attorney General stated that it was not the intent of the Department of Justice to challenge economic concentration or bigness per se, or big mergers as such. During Mr. Geneen's conversation with Mr. Ehrlichman and you, he was told that the President himself has stated that bigness as a merger consideration is not the policy of his Administration.

In light of this, let me advise you of a meeting yesterday between Canteen's counsel from Chicago, Mr. Ham Chaffetz, who represents Canteen in its case, and Mr. McLaren and his trial people. This meeting was held at the request of Judge Austin who will hear the case. Judge Austin suggested that a possible settlement might be reached. They reviewed the case and Mr. Chaffetz said he was ready to settle

since Justice really had no case; i.e., they could not show reciprocity, etc., and that all that was alleged was that ITT was getting too big.

Mr. McLaren said he thinks he has a reciprocity case, but that is "only half the case and even if we did not have that, we would still be proceeding against ITT anyway" because of ITT's series of acquisitions. Further statements by Mr. McLaren were to the effect that

> ITT is continuing to make acquisitions "and has to be stopped."
>
> 003795
>
> ITT is one of the leaders in making acquisitions.
>
> Mr. Geneen has gotten away with a lot of acquisitions that the Department did not challenge.
>
> ITT has made all these acquisitions and is now in the top ten companies.
>
> ITT just keeps going on and everyone else goes along with ITT doing the same thing.
>
> If ITT does it, other people will do it too and "ITT has got to be stopped."

Mr. McLaren referred to the "legislative history" of Section 7 as indicating the Congressional intention to stop increasing concentration and the trend of mergers. He indicated clearly that this was the "other half" of his cases against ITT. Mr. Chaffetz pointed out that Section 7 provides that in each individual case the Government must show an adverse effect on competition. However, Mr. McLaren would not focus on this point at all and merely made statements to the effect that "mere power is enough."

It seems plain that Mr. McLaren's views were not and are not consistent with those of the Attorney General and the White House as expressed to us. Apparently, we are going to be prosecuted, contrary to what the Attorney General, Mr. Ehrlichman and you told Mr. Geneen, not on law but on theory. This is an interesting attitude

in view of Judge Timbers' decision refusing to allow the preliminary injunction in the Hartford and Grinnell cases. Pointing out that Section 7 of the Clayton Act "proscribes only those mergers the effect of which 'may be substantially to lessen competition', not those mergers the effect of which may be substantially to increase economic concentration," the Judge then concluded (Opinion, p. 71-72):

> "The alleged adverse effects of economic concentration brought about by merger activity, especially merger activity of large diversified corporations such as ITT, arguably may be such that, as a matter of social and economic policy, the standard by which the legality of a merger should be measured under the antitrust laws is the degree to which it may increase economic concentration--not merely the degree to which it may lessen competition. If the standard is to be changed, however, in the opinion of this Court it is fundamental under our system of government that that determination be made by the Congress and not by the courts."

003796

Should you care to go into this matter in any detail, I'd be willing to discuss it---only at lunch.

Personal regards,

Tom

Thomas H. Casey
Director
Corporate Planning

Enclosure

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WH

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 69-438
	)	
LING-TEMCO-VOUGHT, INC.,	)	
JONES & LAUGHLIN STEEL CORPORATION, and	)	
JONES & LAUGHLIN INDUSTRIES, INC.,	)	003799
	)	
Defendants.	)	

STIPULATED STATEMENT OF FACTS

The parties to this action, by their attorneys, stipulate for purposes of this action only, and for no other purpose, as follows:

I. JURISDICTION

1. On April 14, 1969, plaintiff United States of America instituted this action under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain an alleged violation of Section 7 of that Act, as amended (15 U.S.C. § 18). Section 15 of the Act vests jurisdiction in "the several district courts of the United States . . . to prevent and restrain violations of this Act." Among other things, Section 7 of the Act prohibits any corporation engaged in commerce from acquiring, directly or

which preceded agreement between the parties on the terms of the proposed Final Judgment. The consummation of the proposal does not contravene the divestiture requirements of the proposed Final Judgment and was expressly excepted, in Subparagraph (f) on page 9 of the proposed Final Judgment from the restrictions otherwise imposed upon defendants by Subsection IV(E) of the proposed Final Judgment.

16. This action is one of several cases brought by the Department of Justice predicated in part on its claim that Section 7 of the Clayton Act prohibits acquisitions by large conglomerate corporations in the course of, and which tend to proliferate, a merger movement where concentration of control of manufacturing assets will be substantially increased and the trend to further concentration will be encouraged. 1/ Although a United States District Court in Illinois and another in the Northern District of Connecticut rejected this contention in the course of denying the Government's motions for preliminary injunctions, it appears that this issue will be fully

1/ United States v. Northwest Industries, Inc., Civil Action No. 69 C102, filed May 31, 1969, in the United States District Court for the Northern District of Illinois; United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civil Action No. 13319, filed August 1, 1969 in the United States District Court for the District of Connecticut; and United States v. International Telephone and Telegraph Corporation and the Hartford Fire Insurance Co., Civil Action No. 13320, filed August 1, 1969, in the United States District Court for the District of Connecticut.

litigated and finally adjudicated in these cases now being prepared for trial.[2/] In Allis Chalmers Mfg. Co. v. White Consolidated Indus., Inc., 414 F.2d 506, 523 (3d Cir. 1969), cert. denied, 396 U.S. 1009 (1969), this contention was supported by the Justice who wrote the "OPINION OF THE COURT." (Another Justice concurred solely on the reciprocity aspect of the opinion, id. at 526-27, and the third Justice dissented, id. at 527 et seq.)

17. The proposed Final Judgment requires LTV to divest all of its interest in Braniff and Okonite, or, in the alternative, all of its interest in J&L. Accordingly, the proposed Final Judgment contemplates a minimum divestiture of more than $500 million of assets. As stated in plaintiff's press release announcing the proposed Final Judgment -- subject to the Court's approval -- the Attorney General stated that it "calls for the most substantial corporate divestiture of any antitrust decree in recent years." (A copy of that press release is attached hereto as Exhibit 1.) Section IV(E) of the proposed Final Judgment contains numerous prohibitions and safeguards to insure that the companies to be divested will be maintained as viable going business entities pending the completion of the required divestiture.

18. Subsequent to the filing of the Complaint herein, LTV disposed of its entire interest in its subsidiaries Wilson Sporting Goods Co., and National Car Rental System, Inc., the book value of whose combined assets exceeded $156 million as of December 31, 1968.

2/ United States v. Northwest Industries, Inc., 301 F. Supp. 1066, 1070 (N.D. Ill. 1969); United States v. International Telephone and Tel. Corp., 306 F. Supp. 766, 796-97 (D. Conn. 1969).

19. The proposed Final Judgment, if entered, will, among other things, reduce the concentration of control of manufacturing assets and should assist in arresting the encouragement of a trend to further concentration as alleged in the complaint. It, therefore, conforms to the claims of the Department of Justice that the Congressional intent in amending Section 7 of the Clayton Act was to prevent undue concentration of economic power through horizontal, vertical or conglomerate acquisitions. 603802

20. The proposed Final Judgment provides relief which is consistent with the main theories upon which this action was instituted and, in particular, with the plaintiff's understanding of the Congressional purpose underlying Section 7 of the Clayton Act "to limit future increases in the level of economic concentration resulting from corporate mergers and acquisitions." S. Rep. 1775, 81st Cong., 2d Sess. 3 (1950).

21. In agreeing to a divestiture of the magnitude required by the proposed Final Judgment, LTV recognized that, upon entry thereof, it would forego its opportunity to contest, inter alia, plaintiff's claim that Section 7 of the Clayton Act bars acquisitions by reason of the anti-competitive effects resulting from mergers which constitute part of, and contribute to, a merger movement and which effect substantial increases in economic concentration. LTV nevertheless agreed to such a divestiture in the belief that a consent settlement would benefit the more than 45,000 public stockholders of LTV and J&L because the protracted litigation would divert the energies of the managements of

enforced by civil or criminal contempt proceedings as may be appropriate under the circumstances.

32. In view of the facts recited in Paragraphs 27 through 31 above, the plaintiff believes that the defendants' agreement to the anti-reciprocity provisions of Sections VII and VIII of the proposed Final Judgment provides substantial protection against the anticompetitive effects which would otherwise result from the acquisition and is therefore in the public interest.

003803

C. Ban on Acquisitions

33. Section V of the proposed Final Judgment prohibits LTV and J&L (if not divested or disposed of) for a period of ten years from the date of entry of the Judgment (or until LTV disposes of all its interest in J&L) from acquiring any firm having assets in excess of $100 million without the prior approval of the plaintiff, or failing such approval, of the Court.

34. The plaintiff represents that this restriction on future acquisitions by defendants LTV and J&L addresses itself to a principal objective of the Complaint herein, namely, the merger movement among large firms and the accelerating trend toward economic concentration in the American economy and, under all the circumstances, is in the public interest.

ITT / Anti-Trust file

EYES ONLY

August 10, 1970

MEMORANDUM FOR JOHN EHRLICHMAN

I have no idea how reliable the reporting is in this letter. Casey is, of course, not a lawyer and may not really understand what is going on in the negotiations. I suspect, however, that he wouldn't have written this without approval of ITT's counsel.

If, indeed, the facts here are correct then we may be riding one horse and McLaren another.

How do you think we should best proceed? My own thought would be that you might want to discuss this again with the Attorney General to be sure that he has made known to Mr. McLaren our policy towards the bigness issue.

004016

Charles W. Colson

EYES ONLY

August 11, 1970

EYES ONLY

WH

MEMORANDUM FOR

THE ATTORNEY GENERAL

John Ehrlichman has asked me to forward the attached material and request that you call him once you've had a chance to review it.

003788

Tod R. Hullin
Administrative Assistant to
John D. Ehrlichman

Attachment

August 10 memo from Chuck Colson to Ehrlichman ~~enclosing~~ enclosing August 7 letter from Thomas Casey of ITT enclosing ~~excerpts~~ excerpts from "Stipulated Statement of Facts" filed by Justice in LTV-Jones & Laughlin case.

EYES ONLY

Attorney General in charge of the Antitrust Division. I was not informed of the progress of the litigation or negotiations between the Department and ITT.

The second point has to do with my contacts with representatives of ITT.

At no time have I talked to any representative of ITT or any of its subsidiaries concerning the litigation or the settlement negotiations.

Based on the records of my office as Attorney General and on my own recollection, I have had contact with three representatives of ITT. I present them in chronological order.

First contact was with Mr. Harold Geneen, president of ITT. The first time I met Mr. Geneen was the evening of May 27, 1970 at a dinner in the White House attended by 45 business leaders. The contact with Mr. Geneen that evening was purely social, and I had no substantive discussions of any kind.

My second contact with Mr. Geneen was on August 4, 1970, in my office. My office calendar shows that this meeting could not have lasted more than 35 minutes. It might have been shorter. The meeting was held at Mr. Geneen's request to discuss the overall antitrust policy of the Department with respect to conglomerates. I assented to the meeting on the express condition that the pending ITT litigation would not be discussed. Mr. Geneen agreed to this condition. The pending ITT litigation was not discussed at this meeting.

At the meeting Mr. Geneen contended that the Department's antitrust policy with respect to conglomerates was to bring suits solely on the bigness theory. I told him this was not the Department's policy and advised him that our policy was to bring litigation only where there was a showing of anticompetitive practices.

I never discussed the content of my conversation with Mr. Geneen with any member of the Department, nor did I communicate with any of them about it.

Next, Mr. Felix Rohatyn. I met Mr. Rohatyn on four occasions, two of them on April 29, 1971, one on September 3, 1971 and one on November 29, 1971.

None of these had anything to do with ITT, and the Department's litigation against ITT was never mentioned or discussed.

My participation in these meetings was as a member of an ad hoc government committee formed in 1970 to deal with the financial problems that various brokerage houses were having at that time. Mr Rohatyn, a partner of the New York firm of Lazard Freres, participated as chairman of the surveillance committee of the New York Stock Exchange. Among other things, that ad hoc committee worked on the SIPEC legislation during the summer of 1970.

I would like particularly to call the committee's attention to the two meetings of April 29, 1971, because there have been other references to that date during these hearings.

These meetings were held to discuss the participation of Mr. Ross Perot in the du Pont brokerage firm, which was having financial trouble, and the obligations of the New York Stock Exchange with respect thereto.

According to my office records, the first meeting that day commenced at 9:40 a.m. Present in addition to myself were Mr. Perot, and Mr. Mort Myerson, an associate of Mr. Perot. Mr. Peter Flanigan joined the meeting at 9:46 and Mr. Rohatyn at 10:30. Mr Rohatyn

state my opinion that he is preeminently qualified for the position which the President has nominated him. I base my opinion not only on his professional qualifications, which are of the highest order, but on his character, his integrity and his dedication to his office and to the public interest.

Mr. Chairman, that terminates my prepared statement and I am available to the committee.

The CHAIRMAN. Mr. Mitchell, in the incident in the Governor's mansion in Kentucky, was that the first time you had ever met Mrs. Beard?

Mr. MITCHELL. Yes, sir; it was.

The CHAIRMAN. What they are asking us to believe is that a total stranger—did she introduce herself to you or how did you meet?

Mr. MITCHELL. I am not quite certain, Mr. Chairman. The mansion, the lower floor of it, had, I would say, somewhere between 40 and 50 people in it. My wife and I were in a reception room off the main hall, and I believe Governor Nunn was there, and Mrs. Beard was in the room. And I don't recall whether anybody introduced me to her or not, but the first contact I had with her was at that time when she approached and opened up on the subject matter of the ITT litigation.

The CHAIRMAN. It is the case of a total stranger meeting the Attorney General of the United States for the first time and discussing a thing of this magnitude with him, is that correct?

Mr. MITCHELL. Well, that was the circumstance. It was the first time, to my knowledge, that I had ever met the lady, and I don't think it was a question of discussing it. It was a question of her bringing it up and my trying to terminate the conversation.

The CHAIRMAN. Yes. Was she drinking?

Mr. MITCHELL. Well, I would believe that most everybody there was but I don't want to characterize her particular condition.

The CHAIRMAN. Did Mr. Kleindienst ever discuss this matter with you?

Mr. MITCHELL. Mr. Kleindienst has never discussed with me the ITT litigation or the negotiations relating thereto or anything relating to the San Diego convention and ITT or Sheraton Hotels or the Republican Party or anything else.

The CHAIRMAN. And you have discussed the arrangements for the convention with no one?

Mr. MITCHELL. I have not discussed the arrangements for the convention insofar as they pertain to the Sheraton Hotel Corp. or ITT with anybody until after the stories were long since in the newspapers.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. What did the officials of ITT who visited you talk to you about?

Mr. MITCHELL. Senator, there was, if you are talking about the visit of Mr. Geneen in August of 1970, as I testified to, and as I understand, he was making his thoughts known throughout the Government and in Congress concerning his opposition to what he thought was the antitrust policies of the Department. It was his contention, as I vividly recall, that the Antitrust Division of the Department was bringing lawsuits based on the concept of bigness as distinguished from the anticompetitive factors required by the statute.

Senator ERVIN. Was there any specific reference to the lawsuit against the ITT or any of its subsidiaries?

Mr. MITCHELL. No, sir. The condition of the meeting was to the effect that that matter would not be discussed, and it was not discussed.

Senator ERVIN. And what was the conversation, what did the other members, I mean the other officers, of ITT, I believe you said there were two others that you have talked to.

Mr. MITCHELL. The other two that I had talked to, one was Mr. Rohatyn whose participation in the question of the stock exchange and the problems of the brokerage firms on the street, and the other one was Mrs. Beard. Those are the other two that I had reference to.

Senator ERVIN. Now did either—well, you have told us what Mrs. Beard attempted to talk about, what did the other officials do, did they say anything about the ITT or anything about either one of the antitrust suits against it or its subordinates?

Mr. MITCHELL. No, neither Mr. Geneen or Mr. Rohatyn discussed at all the ITT litigation or negotiations. Of course, the conversation I had with Mr. Geneen was back in the summer of 1970, and it was just then pending litigation. As I understand it, there were no negotiations going on at that time, and Mr. Rohatyn's conversations with me related entirely to the financial problems of the brokerage houses in New York City. He, of course, as I stated, was in the capacity as chairman of the Surveillance Committee of the New York Stock Exchange which was very heavily involved in that subject matter.

Senator ERVIN. Now, I understand from your testimony that you totally disqualified yourself from participation in any matter relating to the antitrust suits against either the ITT or any of its subsidiaries and that you did not communicate to any of your subordinates in the Department of Justice anything about the conversation you had with either of these three officials?

Mr. MITCHELL. That is absolutely correct, Senator. I did not communicate with anybody in the Department about either of the conversations that I had with Mr. Geneen or Mr. Rohatyn. There was no reason to do so in the latter part and I didn't in the former.

Senator ERVIN. Thank you.

The CHAIRMAN. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I will defer for the time being to my colleague, Senator Fong.

Senator FONG. Attorney General Mitchell, when you met with Mr. Geneen, one meeting was at the White House and the other meeting at your office, is that correct?

Mr. MITCHELL. That is correct, sir.

Senator FONG. At the second meeting, the only question that came up was as to what was your policy relative to antitrust cases?

Mr. MITCHELL. That is correct, Senator.

Senator FONG. Nothing was discussed involving the ITT matter?

Mr. MITCHELL. Nothing whatsoever, the meeting was held under the condition that the subject matter would not be discussed.

Senator FONG. Then when you met with Mr. Rohatyn on four occasions all of those meetings were at the office?

Mr. MITCHELL. They were all at my office, yes, sir.

Senator FONG. And all during the four meetings only the stock exchange problems were discussed?

Mr. MITCHELL. Yes, sir; more particularly during that period of time the financial interest of Mr. Ross Perot in the Du Pont firm

want to talk about it. First he said he removed himself from it. The second thing he said was that it was not a time or place to talk about things like that or to talk about this or anything else. The third thing that I recall him saying was that he didn't want to hear anymore about it. He didn't like the approach that she was making or the pressures that had been brought or something of this nature. And he was right vehement in his last expressions.

Would you tell us what these other pressures were to which Governor Nunn said you referred?

Mr. MITCHELL. Senator, I don't feel that there were any other pressures. I think what he might have had in mind was the last encounter that we had at the table where I said that I would appreciate if she would stop pressing me on the subject matter, which she had been doing on the two prior occasions. That was at the time when you might say, that I lost my sweet disposition and told her in no uncertain terms that I didn't want to have her approach me any further.

Senator HART. I then asked him:

Did he say anything with respect to what kind of pressures had been brought?
Governor NUNN. No, sir.
Senator HART. Just that pressures had been brought?
Governor NUNN. That is all that he—he said something about the pressures being brought.

Well, specifically, except for the conversation then being engaged in with Mrs. Beard, had any pressures been brought on you with respect to the ITT settlement?

Mr. MITCHELL. No, sir. As I stated earlier, I had disqualified myself from the case, had no conversations about the subject matter.

Senator HART. When you say that you had a visit from Mr. Geneen, but you made clear that it would not, the ITT litigation would not, be a proper subject for the discussion, you tell us that Mr. Geneen discussed the Department's antitrust policy with respect to conglomerates. That was at a time when the Department had filed suit against ITT?

Mr. MITCHELL. To the best of my knowledge they had because it was in August of 1970.

Senator HART. You regarded Mr. Geneen as speaking for whom, the American business community and not ITT?

Mr. MITCHELL. I think Mr. Geneen was speaking for both, both ITT and the American business community, because I had read in the newspaper of many statements that he had made on the subject matter. As a matter of fact, I think I recall that he and Mr. McLaren had a debate some place on the subject matter and had made his positions quite widely known through the press as to his opposition on the antitrust policy of our division.

Senator HART. Do your records, if you know, show any meeting you may have had with the Lieutenant Governor of California in the spring of 1971, April or May?

Mr. MITCHELL. Yes, sir; I have the records, I have office records which are kept in three forms. No. 1 is the appointment book which is made up in advance. No. 2 is a log that is kept of all visitors during the course of the day and, No. 3, is a separate card index that relates to visits at my office. I have here the records pertaining to—this is the card index, pertaining to—Lieutenant Governor Reinecke and a Mr. Gillenwaters, and these records show that both of these gentlemen visited me twice, once on the 26th of April in 1971, and the other on the 17th of September in 1971. I know there have been discussions in the

Mr. MITCHELL. Well, I think that was the sole speech where the sole subject matter was antitrust. I have made other speeches, I am sure, about the functions and operations of the Department, in which the antitrust policies were mentioned.

Senator KENNEDY. What was the thrust of that speech?

Mr. MITCHELL. The speech in the Georgia Bar?

Senator KENNEDY. Yes.

Mr. MITCHELL. Well, it dealt primarily with the now established policies of the Department where we were extending some of the prior doctrines to the point where if bigness, and I want to make this very clear, if the product had anticompetitive factors, that our policy would apply to it. That is the thrust of that speech.

Senator KENNEDY. And Mr. McLaren was a vigorous spokesman and a believer in that viewpoint, was he not?

Mr. MITCHELL. Very much so. As a matter of fact, Mr. McLaren and I had quite a number of discussions on the subject matter in question with the formulations of that policy particularly to make sure that we had the appropriate statutory authority under the Kefauver-Celler Act, etc., as to proceed in this direction.

Senator KENNEDY. I imagine Mr. McLaren was under a good deal of—well, I suppose, he was pursuing what might have been considered a controversial antitrust policy in this respect, was he not?

Mr. MITCHELL. Senator, I would say that almost any antitrust policy gets to be controversial unless it is some predatory practice that nobody subscribes to.

Senator KENNEDY. He was, as I understand, sort of an innovator and creator and a true believer in at least this approach on antitrust, was he not?

Mr. MITCHELL. Well, Mr. McLaren, Judge McLaren, as you know, was probably one of the leading antitrust lawyers in this country and had great ability and great expertise and he was particularly interested in seeing that any anticompetitive practice which stifled the competitive aspect of our economy was pursued to the point where it would be eliminated. That was the general approach.

Senator KENNEDY. And you supported that approach?

Mr. MITCHELL. Yes, I most assuredly do.

Senator KENNEDY. Mr. Kleindienst had mentioned, during the course of his appearance here, that he believed very strongly in that approach. I think he volunteered that when any occasion presented itself, he indicated his full and complete support for what Mr. McLaren was attempting to do in the Antitrust Division. I think he even volunteered that he believed you did the same as well at the time you were called upon to speak for the Justice Department.

Mr. MITCHELL. Well, I would believe, Senator, that Mr. Kleindienst would carry out the policy of the department that had been laid down by the Attorney General and the Assistant Attorney General in charge of the Antitrust Division.

Senator KENNEDY. Now, when Mr. Geneen came down to visit you, you had an awareness that the ITT cases were, in effect, in operation or being pursued or were at least in the forefront of the Antitrust Division?

Mr. MITCHELL. I had an awareness that the cases had been filed. The status of them I did not know.

Senator KENNEDY. And when Mr. Geneen came down and was speaking to you about antitrust policy, what sort of argument was it, do you remember, that he was making to you?

Mr. MITCHELL. As I testified, Senator, it is in my prepared statement, the basis of his argument was that the Antitrust Division was bringing these cases on the basis solely of bigness, and that the statutes didn't authorize it, that there wasn't anything wrong with bigness from the economic point of view, and, as I testified in my prepared statement, I told him that that was not the basis upon which the Antitrust Division was proceeding. There had to be anticompetitive factors before the Department's policies applied.

Senator KENNEDY. Was Mr. Geneen persuaded at all by your arguments?

Mr. MITCHELL. I would doubt it very much.

Senator KENNEDY. Did you take any, make any notes on the basis of this meeting?

Mr. MITCHELL. No, sir; none whatsoever.

Senator KENNEDY. Because it was just a general policy discussion?

Mr. MITCHELL. Just a general policy discussion.

Senator KENNEDY. If you accepted Mr. Geneen's arguments, what do you feel would have been the impact on the ITT cases?

Mr. MITCHELL. I don't know, Senator. I don't know enough about the ITT cases to make that judgment.

Senator KENNEDY. Well, certainly he wasn't making these arguments completely out of the blue, was he?

Mr. MITCHELL. Senator, I think he was making them as, almost as, an evangelist with respect to the subject matter.

Senator KENNEDY. Didn't the subject matter affect his own situation?

Mr. MITCHELL. Of course it did. On the other hand, it may have affected further acquisitions by ITT. In other words, both sides of the coin.

Senator KENNEDY. What do you mean, both sides of the coin? You mean the side of the coin that has many——

Mr. MITCHELL. The side of the coin that he was not under restraint and compulsion so far as I know from going ahead with any additional acquisitions at that time.

Senator KENNEDY. What is the other side of the coin?

Mr. MITCHELL. That is it, the other side of the coin was that he was involved in the litigation at that time.

Senator KENNEDY. He was involved in litigation. If there had been a change by the Justice Department of its antitrust policies to accept Mr. Geneen's viewpoint, how do you think that would have affected the antitrust division of your Department?

Mr. MITCHELL. Senator, as I just got through testifying in response to your question, I haven't any idea because I don't know the nature or the merits of those particular cases that were filed.

Senator KENNEDY. Well, so you are suggesting——

Mr. MITCHELL. What I am really saying is that the statutes apply to anticompetitive practices, reciprocity or whatever it may be. They may very well have been involved to the point in the litigation that was then pending in the Department where his argument wouldn't have had any effect upon it.

Senator KENNEDY. Well, do you really believe that to be so?

5.11 EDWARD GERRITY MEMORANDUM, AUGUST 10, 1970

Personal and Confidential

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

INTERNATIONAL HEADQUARTERS

TO J.F. Ryan

FROM E.J. Gerrity, EJG

DATE August 10, 1970

WHEN REPLYING, PLEASE QUOTE FILE

SUBJECT Urgent

John:

As a follow-up to what we did Friday with Colson et al in re antitrust it is important that Bob Schmidt, Dita Beard, Horner-Goodrich, and whomever else should be aware, that we acquaint key people with what happened last Tuesday, followed by the Chaffetz meeting on Thursday, plus our actions on Friday. The purpose is not to have these people act but to have them informed so that they may be ready to act--if needed.

I discussed this with Bill Merriam and Tom Casey and Ed Wallace is aboard here. (Keith is en route to Rio with Hendrix for a two-week visit.) Dita, for example, should brief Rog, Bob et al. Schmidt and the rest, Ray and Bert, will know what to do and Jack and Bernie should be aware and keep their ears open in re what is happening to "Mac," the key to the whole thing.

Bill McPike should be intimately aware and I ask that you and Tom Casey review this closely with him and confirm to me or Ed Wallace that this has been done. I will give you every available input from this end. And, Tom, don't forget Kevin. I'll call Jack today.

One last key reminder: when Hal saw John, he commented on the Savannah speech of June 6, 1969 to this effect: We do not say that bigness is bad; we said that if you merge within the top 200 you may have antitrust problems. Some mergers are good. It is interesting and important that we note that Mac is more responsive to Hart and Celler than to John and the President. It is also important to remember that Chaffetz went to Mac at the suggestion of Judge Austin to see if an agreement could be worked out. Our job is to keep reporting what is happening.

cc: Beard, Casey, Schmidt, Goodrich, Horner, Wallace, Perkins

Personal and Confidential

It was plain that McLaren's views were not and are not consistent with those of the Attorney General and the White House. We are being pursued, contrary to what John told Hal, not on law but on theory bordering on the fanatic.

In his conversation with Hal, John agreed that the steam had gone out of the merger movement because of tax reform legislation, the new accounting principles and general developments in the economy. John agreed with Hal that there was no need for a "crusade" to halt the merger movement because of the reasons I have indicated above. It is plain, therefore, that McLaren is operating on a completely different basis from John and the White House. I believe it has reached the point where he is more concerned about his personal views than those of his superior or the President.

My question to you is, should we get this development back to John, so he is aware, and how do we do it? What is the best way? I would appreciate your help and advice.

ITT WASHINGTON OFFICE,
Washington, D.C., August 24, 1970.

Personal and confidential
To: Mr. W. R. MERRIAM
From: JOHN F. RYAN
Subject: Highpoints

BILL: Here are just a few items that I wanted to be sure I don't miss when I bring you up to date verbally:

1. ANTITRUST

You know of my call on Stans on the 19th (you have a copy of my note covering the visit which I sent to Ned), and HSG's call to me of the 20th. I attempted to explain to Hal that Stans' comments shouldn't necessarily be construed to be a recommendation—it was more in the vein of Stans thinking out loud, suggesting some tangible starting point. Hal's posture is, as you well know, that we have done nothing wrong, that we will do nothing wrong, and that Justice (McLaren) is unfairly harrassing us. As we discussed this morning, the first trial dates are rapidly approaching. Obviously, somebody is going to have to get the ball rolling, either on their side or ours', if there is to be a settlement.

I assume that following our telecon this morning you looked at Ned's memo describing his visit with Agnew. If Kleindienst follows through, this may be the break for which we have been looking. An obvious question here is: How will McLaren react?—or another way to put it, How good a Republican is McLaren?

2. OFDI

You will recall that the intelligence gleaned from Colson has led us to believe that there would be some relief forthcoming during 1970, then Billyou's memo taking exception to this intelligence and lastly Stans' remarks which indicated relief would probably not be experienced until next year. Billyou happened to be here when Ned came during last week. Billyou joined Ned, Bob Schmidt, Bill McHale, and me for a drink at the Carlton and we further discussed the subject with an agreement that we would all think about it and see what we could come up with. It was first suggested that we get back to Colson and ask if perhaps we had misunderstood. When I talked to Hamilton (at Ned's request) last Wednesday, Lyman suggested we ask Colson if relief was coming during 1970, was there to be relief of a specific nature, i.e., case by case, or was it to be generic. During our tete-a-tete in the bar it was decided that our strategy would be not to go back to Colson: the reason being that if it does not come, we can go back to Chuck and say: "My golly, Chuck, you led us to believe that we were going to receive relief, we planned accordingly, it didn't come, and now we're in a terrible bind—you've got to help us." Meanwhile Ned called this morning and said that we should develop an action program on OFDI, incorporating some calls we should set up for Perry and Hamilton. When we've got it together, we will send it to New York, and then our people will get together with Billyou to discuss it. If memory serves me, Ned said he would be seeing Hamilton on Wednesday in Chicago. I think he said it was a dinner for Pat O'Malley. Ned also mentioned that we should include some calls of an unofficial nature at Treasury. We'll have to talk some more about this subject. Note: Please see Billyou's memo of August 20.

3. ROGER'S PARTY

The tentative date on this is September 13. Ned has called me a couple of times on this, as has Rose in followup. You know the reason for this party, but the guest list also will include a number of other cabinet people such as the Blounts, Wilsons, Dominicks, Agnews, Harlows, Fords, and Flanigans. Ned asked that we put together a poop sheet for Mr. & Mrs. Gencen which will include not only brief bio's of the men but also their wives for June; facts about Morton's farm; a fairly complete bio on Mitchell and his recent accomplishments in other areas such as crime, drugs, etc; some detail on the new Post Office plan; and then general information as to the type of clothes to wear, planned activities, etc. I asked Jack Horner to put this together, but Dita will have to get the information concerning the farm, etc. Rose called me Friday, saying that Gerry Hood wanted to confirm the date of 9/13. I told her that she had better hedge a little in that the date was not "cast in concrete." According to Dita, not everyone has as yet been asked, and, while it was the tentative date, this could change.

4. "DITA AND DOLLARS"

I was asked by Ned to get some feel for you from Dita as to what is required. I have a little note on this which I will give to you.

5. BUDGET

I have gone over the budget with Bob—it's ready for review. There are a few items we should kick around. I took Bob over to U.S. Steel and looked at their security setup. Bob Miles has a representative from the company who installs these systems coming in on Wednesday for a survey. Based on USS's expenditure, it would appear that we could do both floors in a comparable manner for something under $1,000. This is the old electrical ribbon idea which is a good answer for our glass entrance panel.

6. FOREIGN BANK ACCOUNT BILL

Joyce has been following this and due to the recent inclusion of the provision that would require declaring money brought in as well as out, this can be potentially very "troublesome." Bob Schmidt and I discussed this on Friday. Joyce should have the print within the next day or so. It was not available today—we understand that there are some loopholes, but they may or may not help our cause.

7. FEC COMVETS

Joe Ceva and John Gardner were here on Thursday and Friday. Pittman also called me on Thursday. Our two competitors are Page and Philco-Ford. Pittman is concerned Waldschmidt of Page is in desperate straits and trying to bring pressure in high DOD levels to challenge our figures as being unrealistically low. We learned today that all three proposals have been returned for further clarification. Bob Miles has his friend watching this one very closely. According to FEC, based on the numbers, we are the apparent winner, but they fear we may be knocked out of the box. So far, our intelligence would have us believe that we are still number one. I have asked Bob Miles to continue to watch this one very closely.

Bill, on another FEC matter, you will recall I passed on what Chasen was quoted as having said concerning FEC's loss of JPL job—please ask me to refresh your memory on this one.

There are a number of other items I will discuss with you, some more important than others. Without regard to their priority, they are as follows:

1. Levitt—Waste Disposal Project with FWPCA
2. ITT Worldcom's lay-offs
3. Occupational Safety Legislation—George Orth/Ray O'Brien S/1
4. Expediting Act
5. Ed Mitchell, Patton, Blow . . . . called me on S/17—will be furnishing us with a position paper
6. Who's Who—Floyd Owens called, and I tried to call him without success—don't know what this is about
7. Nord Schwiebert/Airport Transport Terminal—visit with me on S/19

8. Class Action Bill—please see Joyce memo of 8/21 and Bob Deasy's of same date

There are a few other items of minor importance. I'll pass them on to you.

Welcome Back!!

JOHN.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.
New York, N.Y., April 22, 1971.

Hon. PETER G. PETERSON,
Assistant to the President for International Economic Affairs, Old Executive Building, Washington, D.C.

DEAR PETE: Your time and discussion last week were very much appreciated. Your program would appear to be the first broad constructive approach to the mounting problems of our balance of payments, trade, and overall international position, many factors of which will have direct effect on our economy at home.

I understand that this assignment is new, but let me say it has been urgently needed for a long time.

You have asked if I could suggest some names to work as Committeemen on a fairly intensive basis through a three-month period in the four areas of:

(1) Industrial Technology;
(2) Raw Materials and Clean Energy Source;
(3) Business—Government Relations; and
(4) Productivity.

I have attached a list of names for this purpose with some very brief notations.

In addition, if I may, I would like to offer to serve on any of your Committees. I will do my best on time realizing other commitments. The Business-Government Relations and Productivity is where in my opinion the real battle has to be won if we are to be successful in reversing current trends.

On the subject of our conversation last week, I am attaching a brief note which you may find useful as a summation of one aspect of the problem we discussed.

Thank you again for your interest and courtesy.

Sincerely,

(Original signed by H.S. Geneen.)

SUGGESTED NAMES

1. Eugene Black, financial. Former head World Bank. Wide background international and domestic Government service.
2. John McCone, Business and shipping. Former head atomic energy Government service.
3. Andre Meyer, Financial. Wide background international and domestic.
4. Rudolph Peterson, Former head Bank of America. Wide background on Government commissions.

1. C. W. Cook, Head, General Foods.
2. Richard Gerstenberg, Financial head General Motors.
3. John Harper, Head, Aluminum Company of America.

I know all of these as competent and hard working. The first four are more senior in age and background. The latter three are active in their careers but good.

MEMORANDUM ON ANTI-TRUST POLICY AND ITS RELATION TO THE ECONOMIC POLICY OF THE UNITED STATES

The most significant comment on the Antitrust policy as related to the economic policy of the United States, which is the responsibility of the executive branch of the government, is that there has been little past correlation between the two policies although high interdependence is necessary for successful economic progress.

A specific example in this respect is to be found in the Economic Report of the President, dated February, 1970. What follows are excerpts from the broader text.

Page 95—Mergers, even between competitors, are not per se violations of the law, however, and they may even favor healthy competition. The ready marketability of a firm may encourage others to become entrepreneurs and establish new enterprises. Mergers may also be an efficient way of replacing incompetent managements. They may lead to greater economies of scale in production and marketing. And they may make it easier to transfer resources to the industries or

6. On September 15, 1970 the trial in ITT-Grinnell began. In memoranda dated September 17, 1970 from Ehrlichman to Attorney General Mitchell and October 1, 1970 from Colson to Ehrlichman, the ITT litigation was discussed. Ehrlichman and Colson stated their concern that McLaren's conduct of the ITT cases constituted an attack on "bigness per se" contrary to the Administration's expressed antitrust policy.

		Page
6.1	United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civ. No. 13319, Docket, 5	190
6.2	Memorandum from John Ehrlichman to John Mitchell, September 17, 1970 (received from White House)	192
6.3	Memorandum from Charles Colson to John Ehrlichman, October 1, 1970, with attachment (received from White House)	193

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA	For plaintiff:
VS	~~Richard C. Kleindienst~~ Richard W. McLaren ~~Beddie J. Rashid~~ ~~Robert B. Hummel~~ Lewis Bernstein Joseph H. Widmar Howard B. Myers Donald J. Frickel Department of Justice
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND ~~GRINNELL CORPORATION~~ Dismissed	
~~Joseph P. Cooney~~ ~~Cooney, Scully & Dowling~~ ~~225 Asylum Street~~ ~~Hartford, Conn. 06103~~	John Cassidento Federal Building New Haven, Conn.
Bruce W. Mantemach (For: A-T-O, Inc.) 799 Main Street Hartford, Conn. 06103	
Gerald Norton - Admitted Henry P. Sailer Covington & Burling 888 Sixteenth St. N.W. Washington, D. C. 20006	For defendant: ~~H. Verde Alcorn, Jr.~~ (For: Grinnell Corp.) ~~Ralph G. Elliot~~ ~~Alcorn, Beinwald & Smith~~ ~~One American Row~~ ~~Hartford, Conn. 06103~~
~~David D. McKinney~~, Gen. Counsel ~~Grinnell Corp.~~ ~~260 West Exchange St.~~ ~~Providence, R.I.~~	Ralph G. Dixon (for: Intl. T & T) ~~Day, Berry & Howard~~ ~~One Constitution Plaza~~ ~~Hartford, Conn. 06103~~
Denis G. McInerney (For: Grinnell Corp.) ~~William T. Gifford~~ ~~Cahill, Gordon, Sonnett, Reindel & Ohl~~ ~~80 Pine Street~~ ~~New York, N.Y. 10005~~	Richard M. Reynolds (For: Intl. Tel. & Tel. Cor ~~Day, Berry & Howard~~ ~~One Constitution Plaza~~ ~~Hartford, Conn. 06103~~

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 6 mailed	Clerk					
J.S. 6 mailed	Marshal					
Basis of Action: Antitrust suit. Action to enjoin defendants from violating Section 7 of the Clayton ~~Act~~ Act, as amended. (15 U.S.C. § 18)	Docket fee					
	Witness fees					
	Depositions					

#5

U.S.A. vs. IT&T AND GRINNELL

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
1970	
9/11	Deposition of George J.Haufler, taken on April 10, 1970, filed in Bridgeport. Volume I.
"	Deposition of George J. Haufler, taken on April 27, 1970, filed in Bridgeport, Volume II.
9/14	Order entered granting Writ of Subpoena for those persons who li outside this District and at a greater distance than 100 miles from the place of hearing in this action. Timbers, J. m-9/15/70. Said
*	subpoenas will be served by the Marshall in the District wherein the witness resides. Copies mailed counsel of record.
9/16	Deposition of Chester L. Akonom, filed.
* 9/15	Court Trial Commences. Upon motion of Joseph Widmar; Harold Bressler and Richard Clinton are admitted to this Court for all purposes of this case. Upon motion of Henry Sailor; Robert Sayler and Scott Echon are admitted to this Court for all purposes of this case. Opening statement by plaintiff: 10:13 - 10:30 A.M. No statement by Defendant at this time. Court Exhibit #1 marked for identification. Counsel for plaintiff describes to the Court exhibits marked as full exhibits, Nos. 1 thru 333. Counsel for defendant comments on plaintiff's exhibits as to authenticity only of certain exhibits. Defendant's Exhibits A and B, filed. Defendant states objection to plaintiff's exhibits 150 thru 167. Court sustains objection of defendant as to exhibits 150 thru 167 with leave to the Gov't. to reclaim them. Plaintiff's Exhibit 344 withdrawn. Court adjourned in this case at 12:40 P.M. until 9/16/70 at 10:00 A.M. Timbers, J. M-9/16/70
9/16	Court Trial continues. Deposition of Lawrence McNamara taken on Jan. 23, 1970, filed. Deposition of M.B. Minds taken on Sept. 11, 1970, filed. At the request of Defendant's counsel, court permits Bruce Hedges to sit at counsel table. Court orders any witnesses expected to testify for either side be sequestered. Plaintiff's witnesses Frank J. Fee and John M. Coleman sworn and testified Plaintiff's Exhibits 384 and 385 filed. Defendant's Exhibit C filed. Court adjourned at 5:06 P.M. until 10:00 A.M. 9/17/70. Timbers, J. M-9/17/70
9/17	Court Trial Continues. Court opens at 10:00 A.M. Plaintiff's witnesses John B. Reynard, Jr., Michael Carden and George Leone, sworn and testified. Court adjourned at 4:19 P.M., until 10:00 A.M., 9/18/70. Timbers, J. M-9/18/70
9/18	Court Trial Continues. 2 Plaintiff's witnesses (A.C. MacDonald and Claude Chafin) sworn and testified. Defendant's motion to strike portions of the Testimony of witness Carden heard. Decision Reserved. Court adjourned at 12:21 P.M. until 10:00 A.M. 9/22/70. Timbers, J. M-9/21/70
"	Marshal's non est return filed. - Civil Subpoena - William Jose
9/22	Court Reporters notes of proceedings of September 15,16,17,and 18 (contained in one envelope), filed. Cunningham, R. Trial.
9/22	Court Trial Continues. 3 plaintiff's witnesses sworn and testified. The Court grants defendant permission to resume and complete deposition of witness Stevens. Plaintiff's Exhibits 385, 387, 388, 389 and 390 marked for identification - Then admitted as full exhibits Court adjourns at 4:10 P.M. until 10:00 A.M. tomorrow. Timbers, J. M-9/23/70
9/23	Court Trial Continues. Court rules on Defendant's motion to Strike portions of the Testimony of Witness Carden. Plaintiff's witness L. B. Minds resumes the stand for further testimony. Defen-

September 17, 1970

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: The United States vs. ITT

I was disappointed to learn that the ITT case had gone to trial with apparently no further effort on the part of Mr. McClaren to settle this case with ITT on the basis of our understanding that "largeness" was not really an issue in the case.

ITT has passed word to us that the gravamen of the case remains "largeness" which is contrary to the understanding that I believe you and I had during the time that we each talked to Mr. Gineen.

004146

I think we are in a rather awkward position with ITT in view of the assurances that both you and I must have given Gineen on this subject.

I'll be out of touch for about two weeks, but I would appreciate your reexamining our position in the case in view of these conversations. Gineen is, of course, entitled to assume the Administration meant what it said to him.

John D. Ehrlichman

JDE:JDE:kom

bcc: Colson
Cole

CONFIDENTIAL
EYES ONLY

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

October 1, 1970

EYES ONLY

MEMORANDUM FOR JOHN EHRLICHMAN

I am enclosing a copy of the speech which Mr. McLaren gave on September 17th. He does not, as you will see, defend the proposition that under the existing anti-trust laws a case can be brought on the grounds of bigness per se. What he does argue is that bigness is not good, and that the thrust of the anti-trust laws should be directed to economic concentration and bigness. He points out that while legislation might be needed, Justice can and is doing things, short of obtaining new legislation (note the last paragraph in particular).

In sum, I think that we still have a problem here, which is a serious one and which is manifesting itself in Mr. McLaren's conduct of the ITT case.

003988

Charles W. Colson

EYES ONLY

Department of Justice

BIGNESS, EFFICIENCY AND ANTITRUST

REMARKS

OF

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Before The

COUNCIL ON ANTITRUST AND TRADE REGULATION

50th Anniversary Convention
The Federal Bar Association

Washington, D.C.

September 17, 1970

BIGNESS, EFFICIENCY AND ANTITRUST

Too often I think that we of the antitrust bar forget that the debate over corporate size, including the concepts of economies of scale and industrial concentration, and their relationships to antitrust violation, is no modern phenomenon. It has challenged lawyers and economists almost since the passage of the Sherman Act. Much evidence has been gathered on the subject over the years. My thesis today -- based on this evidence -- is that bigness as such is not bad, but you don't have to be a big, multi-plant firm to be good. There is still a place in our economy and in our society for the efficient, single-plant firm.

00399 Cat Pub. Co. w/preceding pages

I.

In July 1911, a Senate resolution directed the Committee on Interstate Commerce to consider "what changes are necessary or desirable in the laws of the United States relating to the creation and control of corporations engaged in interstate commerce." 1/ The hearings which followed make

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1/ Report of the Senate Committee on Interstate Commerce pursuant to S. Res. 98. 62nd Cong., 1913, p. 1

interesting reading. One witness indicated that such corporations should be licensed by a federal commission and the license revoked in case of improper behavior. He believed corporate concentration had many favorable aspects, but "in order to protect the people against imposition on the part of the managers of those aggregations of wealth there should be government control." 2/ Those who regard some recent antitrust policies as radical might ponder the fact that this federal licensing system was suggested by Judge Elbert Gary of United States Steel.

Another witness at the 1911 hearings spelled out some of the favorable aspects of corporate size which Judge Gary undoubtedly had in mind. George Perkins, who had been associated with the Morgan interests, argued that large size promoted industrial efficiency. 3/ "There is no better comparison," he said, "than the difference between a large and a small college. You get, as a rule, the best football

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2/ Id. at p. 843.

3/ Id. at pp. 1104, 1108, 1120.

and the best baseball team at a large college . . . . [b]ecause you have a larger number of men to select from. You can maintain your efficiency in a large corporation better because you have a large number of men to select from." 4/ Mr. Perkins also spoke of the ability of large firms "to appropriate a great deal of money for experimental work" and to compete successfully in world markets. 5/003991

It fell to a wealthy Boston lawyer named Brandeis to present the contrasting view. He met the efficiency argument head-on. Many large enterprises are formed, he said, not to derive efficiencies but because the businessman "may make a great deal more money if he increases the volume of his business tenfold, even if the unit profit is in the process reduced one-half." 6/ As for the formation of the trusts, the "potent causes" were not a desire for greater efficiency but to avoid "very annoying competition," "the desire of promoters and bankers for huge commissions," and the capitalization of failure by buying out a vigorous competitor

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4/ Id. at p. 1108.

5/ Id. at p. 1124.

6/ Id. at p. 1147.

at a premium price. 7/

Brandeis was also sensitive to problems of modern management. "When . . . you increase your business to a very great extent, and the multitude of problems increase with its growth, you will find, in the first place, that the man at the head has a diminishing knowledge of the facts and, in the second place, a diminishing opportunity of exercising a careful judgment upon them." 8/ The successful trusts owed their success, he argued, not to efficient management but to market power. 9/ And he observed that during the period in which the Steel Trust had existed "we have been losing our relative position in the great markets of the world." 10/ 00399.

Another shortcoming of industrial concentration was its tendency to discourage invention. As Brandeis put it: "Men have not made inventions in business, men have not made economies in business,

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7/ Id. at p. 1171.

8/ Id. at p. 1147.

9/ Id. at p. 1148.

10/ Id. at pp. 1150-51.

to any great extent because they wanted to. They have made them because they had to, and the proposition that 'necessity is the mother of invention' is just as true today in the time of the trusts. . .as it was hundreds of years before." 11/

Finally, Brandeis spoke of the political and social consequences of industrial concentration. "[Y]ou can not preserve political liberty," he observed, "unless some degree of industrial liberty accompanies it," 12/ and he cautioned the committee to "consider the effect [of concentration] upon the development of the American democracy." 13/

II.

003996

I have described Brandeis' arguments against economic concentration at some length, for a number of reasons.

First, it is striking how the Brandeis view of economic concentration pervades modern antitrust legislation, adjudication and enforcement. The point need not be belabored to those who think of the Celler-Kefauver Act of 1950, the Brown Shoe

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11/ Id. at p. 1208.

12/ Id. at p. 1155.

13/ Id. at p. 1166.

decision of 1962, 14/ and the conglomerate merger cases filed by the Antitrust Division last year. Moreover, the reasons why modern antitrust is resistant to further economic concentration are very largely the same ones which aroused Brandeis' concern at the turn of the century. If one thinks of the political aspects of concentration which Mr. Justice Douglas addressed in dissent in Columbia Steel, 15/ which Senator Kevauver advanced during the debate on the Celler-Kefauver Act, 16/ and which Mr. Justice Black set forth in Northern Pacific, 17/ one recalls Brandeis' warning about the effect of concentration "upon the development of the American democracy." In short, the Brandeis view is very largely the modern view.

003997

A second reason is that the claims which Brandeis had to meet have not yet been laid to rest. I would like to say a word about two of the claims: that if we want efficiency and innovation, we must be willing to

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14/ Brown Shoe Co. v. United States, 370 U.S. 294 (1962).

15/ United States v. Columbia Steel Co., 334 U.S. 495, 535-36 (1948).

16/ 96 Cong. Rec. 16452.

17/ Northern Pac. Ry. Co. v. United States, 356 U.S. 1, 4 (1958).

accept economic concentration.

III.

There has been a nagging fear harbored by many observers that antitrust, by seeking to promote competitive markets, runs counter to the goal of promoting efficiency. Early supporters of the concept of antitrust, such as Brandeis, had relatively little statistical evidence with which to rebut this view. 18/ But in the last two decades, a large number of studies have given us considerable evidence about the relationship between concentration and efficiency, between bigness and economies of scale.

No one study claims to be conclusive, and 003938 pitfalls seem evident in almost every attempt to define and measure accurately economies of scale; but even granting these caveats, it is now fair to suggest that those who see an incompatibility between efficiency and low concentration are in error. 19/

18/ See Freund, "On Law and Justice," Harvard University Press, 1968, p. 129: "What he [Brandeis] asked of economists was a study of optimum size in various lines of enterprise. Perhaps we shall live, as he did not, to witness their report." The foregoing was written in 1956.

19/ For example, see the impressive testimony gathered in Hearings on Economic Concentration, Senate Subcommittee on Antitrust and Monopoly, 1964-1969, especially parts 3 and 4. For a careful survey of the evidence, see F.M. Scherer, Industrial Market Structure and Economic Performance, Rand McNally, 1970, chap. 4.

Two of the cardinal studies were made by Professors Joe Bain and Thomas Saving. Professor Bain examined a sample of 20 important industries and found that, at most, plant economies of scale were important in four of them. Industries with "unimportant" plant scale economies included petroleum, cigarettes, soap, liquor, canned goods, tires, and flour. Industries with only "moderately important" plant scale economies, where optimum size plants were 4 to 6% of total market capacity, included farm machinery, rayon, and steel. 20/ Professor Saving's study included a sample of 132 manufacturing industries; he found in over 70% of these industries that a minimum size efficient plant would produce less than 1% of industry output. 21/ Consistent with these studies is the important finding that the four largest firms in highly concentrated industries are seldom made up of one large efficient plant; they are generally multiple plant firms, on the average operating 5 times as many plants as those firms not in the top four. From these findings,

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20/ Joe Bain, Industrial Organization, Wiley, 1968, chap. 6.

21/ Thomas Saving, "Estimation of Optimum Size Plant by the Survivor Technique," Quarterly Journal of Economics, Nov. 1961, pp. 569-607.

Professor Ralph Nelson concluded that concentration reflects the operation of many plants, not simply of large efficient plants. 22/

This is not to gainsay the importance of economies of scale in American industry, but to indicate that the economies are often reached at relatively small plant sizes. To be sure, there is some evidence that the optimum size plant is increasing in absolute size due to changes in technology. 23/ But this increase in optimum size must be viewed in the context of growing markets. Where markets are growing, an increase in the absolute size of optimum size plants will not necessarily mean that an efficient plant will account for a larger percentage of the total market.

004091

In addition, technological change can cut both ways. It is not always a force for increasing the size of efficient plants. Many important technological developments have been forces for deconcentration in that they enable smaller plants to be as efficient, or more efficient, than larger plants. Illustrations

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22/ Ralph L. Nelson, Hearings on Economic Concentration, supra n. 19, Part 1, pp. 269-272.

23/ Saul S. Sands, "Changes in Scale of Production in United States Manufacturing Industry, 1904-1947," Review of Economics and Statistics, Nov. 1961, pp. 365-368.

of this phenomenon are numerous: the opportunity to purchase small power sources, the greater flexibility of trucks and new highways for shipping products in small quantities, the ability to subcontract research endeavors, and the availability of computer services and communication devices previously unavailable to small firms. 24/

IV.

Closely linked with the notion that efficiency dictates high concentration is the belief that high concentration, with the security and market power it affords, is a prerequisite for research and innovation. For example, David Lilienthal wrote in 1952 that, because of the large financial expenditure and risk which "significant research" entails, "[b]igness and research activity are largely synonymous whether in business or in government." 25/

24/ See Dr. John Blair's findings, in Hearings on Economic Concentration, supra n. 19, Part 4, pp. 1536-1556.

25/ David E. Lilienthal, "Big Business: A New Era," Harper & Bros., 1952, pp. 69-72.

One can easily see how this view could be widely held. A common conception of research today is the team of white-coated, highly trained scientists working in laboratories with expensive, elaborate equipment and everyone striving methodically for a specific breakthrough. And, to be sure, there are such scientists and such laboratories. But they do not represent the typical research endeavor, nor do they produce the bulk of our nation's technological 0040033 advances. In fact, there are numerous examples, some spectacular, indicating that the "19th Century" view of invention and innovation is still most germane.

Nicholas Christophilos was installing elevators in Greece and teaching himself nuclear physics when he developed the principle of strong focusing for cyclotrons. The Atomic Energy Commission was informed of this by his letter, which they neglected; they had to rediscover the principle - a year later. Actually the first cyclotron itself, built by Ernest Lawrence, contained sealing wax, common window glass, and wire. The self-winding watch was not invented by the large Swiss watch makers; indeed they first rejected the idea when presented to them

by the English watchmaker John Harwood. And the experiments leading to Kodachrome were often performed in a kitchen sink. One of our nation's most prominent inventors, Land of Polaroid, has been characterized as essentially an "amateur scientist" in the finest sense of that term; he left college before graduation to undertake independent research, and he certainly does not fit in the mold of the narrowly specialized scientist who, with or without a team, stalks a definite research goal. Yet Land's cameras have delighted both amateur photographers and the Department of Defense. 26/

004001

26/ See Gordon Tullock, The Organization of Inquiry, Duke University Press, 1966, Chap. VIII, and the testimony of Richard Stillerman, in Hearings on Economic Concentration, supra n. 19, Part 3, pp. 1078, 1081.

The breakthrough of the oxygen process in steelmaking did not come from the laboratories of our giant steel firms but rather from a Swiss chemistry professor and the pioneering innovation of a small Austrian firm that was about 1/3 the size of a single plant of United States Steel. In this country, Big Steel was lethargic in its response to this breakthrough; the oxygen process was first used, with great success, by McLouth Steel -- which at the time had less than 1% of our country's steel capacity. 27/

004005

The bulk of the available evidence runs counter to the hypothesis that high concentration, huge size, and substantial market power are prerequisites for research and innovation. Indeed, some of the most careful studies find that, if anything, market power and the security of bigness, with the concomitant vested interest in the status quo, may have a stultifying effect. And I submit that this should not be surprising. One of the authors of the classic study on the sources of invention has observed: 28/

27/ Walter Adams and Joel Dirlam, "Big Steel, Invention, and Innovation," Quarterly Journal of Economics, May 1966, p. 167.

28/ Richard Stillerman, in Hearings on Economic Concentration, supra n. 22, Part 3, p. 1080.

Because invention demands men with fanatic faith in their ideas, men willing to ignore the experts who say it cannot be done, men unafraid to butt heads with established authority, the corporate laboratory may not always provide the ideal milieu for inventive achievement.

V.

I have tried to indicate the extent to which the old arguments about economic concentration are echoed in today's debates, and how the modern antitrust view largely reflects and vindicates the doubts which Brandeis voiced years ago. But if the arguments about concentration persist, so does the problem, and I would like to describe briefly the current perspective of the Antitrust Division.

004006

Our merger program is by now pretty well known -- some might say notorious. The giant merger wave which was under way early in 1969 seems to have abated, in response not only to the several cases we have filed but to stock and money market conditions as well. We are seeking legislation to perfect our enforcement power, such as the proposed

amendments of the Expediting Act now before the Congress. We are continuing our enforcement efforts and expect that our view of the scope of the Celler-Kefauver Act will be sustained by the courts. If we are wrong and if the merger wave revives, we will have to consider seriously the need for new legislation.

Mergers may, of course, be a force for deconcentration and increased competition. I have in mind "foothold" mergers, which we welcome and encourage. If merger activity does increase, I hope it may consist of more mergers of the foothold variety.

004007

In one aspect, economic concentration is a process, stimulated by mergers, pricing and sales policies, patent restrictions and the like. It is also a condition, and we are often asked what can be done about concentrated industries.

The difficulties in this area are considerable. Oligopoly may have taken hold in an industry many years ago, and the facts as to how a firm or group of firms attained market power are often obscure. Proof of a violation in this area is difficult at best; suits are likely to be protracted affairs; and courts may be reluctant to grant dissolution

because of the possible disruption which may result.

However, I think antitrust and other policies are by no means helpless to combat the problem. By preventing mergers among important and viable competitors in markets that are concentrated or where concentration is threatened, we hope to prevent further concentration and permit the gradual erosion of existing concentration as a result of new entry and new technology. We also hope to encourage pro-competitive new entry, either de novo or by foothold acquisitions, by preventing the largest firms in the nation from taking over leading firms in concentrated industries. In addition, we hope that our traditional commitment to a policy of free trade may enable imports to compensate, at least in part, for imperfect competition in domestic markets.

004008

VI.

The romance with bigness and power is a recurrent theme in American history. In 1938, Charles Beard, in an article which he called "The Antitrust Racket," 29/ concluded that "ours is. . .

29/ 96 New Republic 182, 184 (1938).

a great continental, technological society, and the trust-busters, however honest and honorable, are just whistling in the wind." I have some notion how Thurman Arnold must have reacted to Beard's verdict. I suspect he would have referred to a passage from E. M. Forster's novel, Howards End, where Uncle Ernst, having moved to England from Germany, said to his German nephew: 30/

> It is the vice of a vulgar mind to be thrilled by bigness, to think that a thousand square miles are a thousand times more wonderful than one square mile, and that a million square miles are almost the same as heaven. That is not imagination. . . . [I]t kills it. . . .

We have staked a great deal on this proposition, and our efforts will be closely watched by other economies which face choices similar to our own. For myself, I believe we are on the right track, and I hope that we can carry forward our past successes in the years ahead.

30/ Forster, "Howards End," p. 36 (1921), quoted in Freund, "On Law and Justice," Harvard University Press, 1968, p. 130.

7. The trial of ITT-Grinnell was completed on October 30, 1970 and the case was taken under advisement. A judgment for ITT on the merits was rendered on December 31, 1970. A notice of appeal was filed on March 1, 1971.

Page

7.1 United States v. International Telephone and Telegraph Corporation and Grinnell Corporation, Civ. No. 13319, Docket, 1,6-7..... 214

7.2 United States v. International Telephone and Telegraph Corporation, Opinion, December 31, 1970, 324 F. Supp. 19..... 217

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

D. C. Form No. 104 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA VS INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND GRINNELL CORPORATION Dismissed	For plaintiff: Richard W. McLaren Lewis Bernstein Joseph H. Widmar Howard B. Myers Donald J. Frickel Department of Justice John Cassidento Federal Building New Haven, Conn.
Joseph P. Cooney Cooney, Scully & Dowling [illegible] Pearl Street Hartford, Conn. 06103 Bruce R. Manternach (For: A-T-O, Inc.) 793 Main Street Hartford, Conn. 06103 Gerald Norton - Admitted Henry P. Sailer Covington & Burling [illegible] Sixteenth St. N.W. [illegible]shington, D. C. 20006 [illegible] Gen. Counsel Grinnell Corp. 260 [illegible] Exchange St. Providence, R.I. Denis G. McInerney (For: Grinnell Corp.) [illegible] Liftlund Cahill, Gordon, Sonnett, Reindel & Ohl 80 Pine Street New York, N.Y. 10005	For defendant: H. Meade Alcorn, Jr. (For: Grinnell Corp.) Ralph G. Elliot Alcorn, Baldwin & Smith One American Row Hartford, Conn. 06103 Ralph G. Dixon (for: Intl. T & T) Day, Berry & Howard [illegible] Connecticut Blvd. Hartford, Conn. 06103 Richard M. Reynolds (For: Intl. Tel. & Tel. C Day, Berry & Howard One Constitution Plaza Hartford, Conn. 06103

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed	Clerk					
J.S. 6 mailed	Marshal					
Basis of Action: Antitrust suit. Action to enjoin defendants from violating section 7 of the Clayton Act, as amended. (15 U.S.C. § 18)	Docket fee					
	Witness fees					
	Depositions					

D. C. 110 Rev. Civil Docket Continuation — U.S.A. VS. I.T.&T.

DATE 1970	PROCEEDINGS	De Jud:
10/21	Court trial continues. 5 Defense witnesses sworn and testified. Defense exhibits LL through ZZ, filed. Court adjourned at 3:10 P.M. until 10:00 A.M. October 22, 1970. Timbers, J. M-10/22/7	
10/22	Court trial continues. 5 Defense witnesses sworn and testified. Court adjourned at 4:11 until 10:00 A.M. October 23, 1970. Timbers, J. M-10/23/70.	
10/23	Court trial continues. 6 Defense witnesses sworn and testified. Court adjourned at 4:32 until 10:00 A.M. on October 27, 1970 Timbers, J. M-10/26/70.	
10/27	Court trial continues. 5 Defense witnesses sworn and testified. Court adjourned at 3:02 until 10:00 A.M. on 10/28/70. Timbers, J. M-10/28/70.	
10/28	Court Reporter's notes of proceedings of October 20,21,22 23 and 27, filed at Bridgeport, Cunningham, R. (Contained in one envelope)	
"	Court trial continues. Plaintiff's Memorandum in Opposition to Motion to Strike Dr. Mueller's Testimony, filed. 2 Defense witnesses sworn and testified. Defendants' exhibits AB through AR, filed. Defendant Rests - except that record may be kept open as to 9 stipulations. Defense exhibits EE and KK, admitted as full exhibits. Court adjourned at 12:35 until 10:00 A.M. on 10/30/70. Timbers, J. M-10/29/70.	
10/30	Court trial continues, Defendant's exhibits AS and AT, filed. Defendant's counsel by agreement of plaintiff Stipulate on the record certain testimony, of Frank Weinstock, Sheldon Diller, Robert Pettit and James Hogland. Stipulation approved by the Court. Defendant rests. Plaintiff's Rebuttal case. Plaintiff's exhibit 427, filed. Plaintiff's counsel by agreement of Defendant Stipulate on the record certain testimony of John Ryan. Stipulation approved by the Court. Plaintiff rests in rebuttal. Court rules on all open matters except Plaintiff's exhibit 423. Court rules on counsels Objections to Designations. Defendant's exhibits AA,BB,CC, AND DD, admitted as full exhibits. Counsel argue on the admissability of Plaintiff's exhibit 423 marked for identification. Court sustains defendant's objection to plaintiff's exhibit 423 for identification. Summations by Plaintiff 2:13 to 3:25; Defendant 3:48 to 4:48 and closing argument by Plaintiff 4:48 to 4:52. Decision Reserved. Proposed findings Conclusions of Law and Briefs are to be filed (original and copy) on 12/1/70. Reply if any 12/11/70. Court adjourned at 5:08. Timbers, J. M-11/2/70.	
11/2	Transcript of Final Pre-trial Conference on 9/9/70 and of 1st through 18th days of trial, filed. Phelps, R. (	
11/6	Court Reporter's Composite Index to Transcript of Trial Proceedings of September 15, 16, 17, 18, 22, 23, 24, 25, 29, 30, October 2, 20, 21, 22, 23, 27, 28 and 30, 1970, filed. (Phelps, R)	
11/10	Stipulation, filed that the record may be reopened for purpose of admitting plaintiff's exhibits 428, 429, 430, and 431 into evidence as full exhibits as part of plaintiff's rebuttal case. "So Ordered." Timbers, J. M-11/10/70. Copies mailed counsel.	
11/10	Stipulation as to evidence to be marked as Defendant's Exhibit AT, filed.	
11/18	Deposition of Thomas L. Mitchell, filed.	
11/24	Stipulation filed that the record in this case may be reopened for the purpose of admitting into evidence as Defendant's Exhibit DX AU, Stipulation re testimony of Mr. Harold Geneen. SO	

DATE 1970	PROCEEDINGS	Date Order Judgment No
	ORDERED. Timbers, J M-11/24/70 Copies mailed to Attys Widmar and Sailer.	
12/1	Post Trial Brief of the United States, filed, at Bridgeport.	
"	Post Trial Memorandum, filed by defendant at Bridgeport.	
"	Proposed Findings of Fact and Conclusions of Law submitted by the Government, filed at Bridgeport.	
"	Addendum to Post-trial Brief Submitted by the United States, at Bridgeport.	
12/4	Motion of Ralph C. Dixon and Richard M. Reynolds to withdraw as attorneys of record for International Telephone and Telegraph Corp., filed.	
12/14	Government's Reply Brief, filed.	
	Government's Comments on Defendant's Proposed findings of Fact, filed.	
12/14	Order endorsed on Motion of Attys. Dixon and Reynolds to withdraw as follows: "So Ordered. 12/11/70." Timbers, J. M-12/14/70. Copies mailed counsel.	
12/15	Reply Memorandum of Defendant, filed.	
12/31	Memorandum of Decision, entered. The Court concludes as follows: (1) That the Court has jurisdiction over the subject matter and the parties; (2) That venue is properly laid in the District of Connecticut; (3) That the government has not sustained its burden of establishing that Grinnell is the dominant competitor in any of the relevant product and geographic markets, i.e. in any line of commerce in any section of the country; (4) That the government has not sustained its burden of establishing that ITT's acquisition of Grinnell may have the effect of substantially lessening competition; (5) That the government is not entitled to a permanent injunction enjoining the said acquisition; (6) That defendant is entitled to judgment dismissing the complaint on the merits; (7) That the final judgment to be entered shall incorporate and continue in effect the provisions of the hold separate order entered herein on October 30, 1969, 306 F.Supp. at 799-800, pending receipt by the Clerk of this Court of the mandate of the United States Supreme Court upon any appeal which may be taken from the judgment of this Court pursuant to 15 U.S.C. §29 (1964); (8) That the Clerk of this Court is directed to enter final judgment forthwith. Timbers, J. Copies mailed to Attorneys Widmar, Sailer, McInerney, Alcorn and Dixon. Copy handed U.S. Attorney. M-12/31/70 Copies also mailed to news media, etc. per W	
"	Judgment entered in favor of the defendant, dismissing the complaint on the merits with costs of action as provided by law. The provisions of the hold separate order, 306 F. Supp. 799-800, entered herein on October 30, 1969, remain in full force and effect, pending receipt by the Clerk of this Court of the mandate of the United States Supreme Court upon any appeal which may be taken from the judgment of this Court pursuant to 15 U.S.C. §29 (1964). Earl, C. Copies mailed to Attorneys Widmar, Sailer, McInerney, Alcorn and Dixon. Copy handed to U.S. Attorney. M-12/31/70 Copies also mailed to news media, etc. per WHT.	
1971		
3/1	Notice of Appeal to the Supreme Court of the United States, filed by Plaintiff. Copies mailed to all counsel.	
3/26	Record on Appeal mailed Supreme Court of U.S. copies of docket entries and Index mailed Attys. Kleindienst, Shapiro, McLaren, Rashid, Hummell, Bernstein, Widmar, Myers, Frickel, Cassidento, Norton, Sailer.	

(Cont'd.)

tiff's counsel had more to complain about than those representing Trefina and Great American. That was because one of plaintiff's able counsel had a low boiling point and let his feelings get the better of him on a few occasions. He had to be called down firmly a couple of times in the presence of the jury, while the remonstrances about which Trefina complains were out of the jury's presence. It was primarily because of the restraint that the Court had had to use on one of plaintiff's counsel that he gave the instruction in the main charge shown in the footnote below.[25]

Since only the rough spots in the trial are included in this summary, a person not reading the entire record might get the impression that there was constant antagonism between the Court and counsel. The contrary is true, because on the whole the trial went along smoothly. Usually, only one or maybe two of the kind of incidents set out herein occurred in a whole day of trial, and most of them were out of the presence of the jury. This was the kind of a case where the Court did have to keep a tight rein to prevent things from getting out of control. Partners in a large deal had fallen out and had become bitter towards each other. The stakes were high. Trefina and Great American were accusing Diaz, one of the most prominent citizens of Argentina, with having bribed Argentine public officials in high places. The lawyers involved were able and aggressive. There were times when they reflected the feelings of their clients. But, taken as a whole, the trial progressed on an even keel, even though the Court was determined that all available, relevant evidence should be produced at the trial and Trefina and Great American were equally determined to suppress as much as possible.

Trefina's motion to dismiss or for judgment will be overruled.



UNITED STATES of America, Plaintiff,

v.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, Defendant.

Civ. A. No. 13319.

United States District Court, D. Connecticut.

Dec. 31, 1970.

Government civil antitrust action seeking declaratory and injunctive relief to enjoin conglomerate merger resulting from acquisiton by corporation engaged in communications and other varied enterprises (ITT) of stock of automatic sprinkler fire protection manufacturer and installer (Grinnell). After trial on

25. "Before I go on and close the charge, I do want to make it clear to you that you should not take into consideration any admonitions I have had to make to the lawyers in the case. Lawyers are advocates. They get the feeling their clients have. You are bound to know that because of these charges in this case there is a lot of bitterness. Sometimes the lawyers are so close to the clients that the feeling rubs off on them, and they get worked up. They have got to be pretty partisan to be effective and to represent their clients right under our adversary system. But at any rate, you ought not to take into consideration anything I have said along that line, any firmness I have had to show to hold this thing on an even keel. You have a lot higher duty than to decide this thing on the basis of a game. It is not a game. It is your duty to tell what the truth is here on these questions that I have asked you, and that ought to be decided on the basis of the evidence, whether you agree with me about my admonitions of the lawyers or not. Their conduct is not evidence at all. We must get right down here to the truth about the situation, in the light of the evidence you have heard, and in the light of the instructions I have given you. The message I am trying to get over to you is that insofar as you and I are concerned, we are trying the rights of the litigants. We are not trying the lawyers."

the merits, the District Court, Timbers, Chief Judge, held (1) that, after delineating the relevant product and geographic markets, the overwhelming preponderance of the credible evidence clearly established that Grinnell, although a large and leading competitor, is not the dominant competitor in any relevant market; (2) that, assuming arguendo that Grinnell is a dominant competitor, the government has failed to sustain its burden of establishing that Grinnell will gain marketing and promotional competitive advantages from the merger in the specific respects claimed, viz. (a) package or system selling, (b) affiliation with Hartford Fire Insurance Company, (c) access to ITT's financial resources and advertising, (d) foreign expansion, (e) vertical foreclosure, (f) central stations or (g) reciprocal dealing—the Court having considered such alleged competitive advantages separately and cumulatively; (3) that Section 7 of Clayton Act, as amended in 1950, proscribes only those mergers the effect of which "may be substantially to lessen competition", not those mergers the effect of which may be substantially to increase concentration; (4) that, if the standard for the legality of a merger is to be changed, it is fundamental under our system of government that any decision to do so be made by the Congress, not by the courts; (5) that the government's invitation to construe the statutory language "in any line of commerce" as a mandate for the Court to determine whether "anticompetitive consequences will appear in numerous though undesignated individual 'lines of commerce'" is most emphatically declined as attempted judicial legislation; (6) that the government is not entitled to a permanent injunction enjoining the acquisition; (7) that defendant ITT is entitled to judgment dismissing the complaint on the merits; and (8) that, pending appeal to the Supreme Court, the hold separate order entered after the preliminary injunction hearing will remain in effect.

Judgment for defendant.

See also D.C., 306 F.Supp. 766.

1. Monopolies ⇐20

When a company which is dominant competitor in relatively oligopolistic market is acquired by much larger company, such acquisition violates the Clayton Act if the acquired company gains marketing and promotional competitive advantages from the merger which will further entrench its position of dominance by raising barriers to entry to the relevant markets and by discouraging smaller competitors from aggressively competing and effect of such merger will be substantially to lessen competition. Clayton Act, § 7, 15 U.S.C.A. § 18.

2. Monopolies ⇐24(13)

Evidence in antitrust action established that relevant geographic market for each line of commerce was the national market, that entire United States was the "section of the country" within which the effects of communications corporation's acquisition of automatic sprinkler fire protection manufacturer upon relevant lines of commerce were to be measured and that regional areas for installation of automatic sprinkler systems which were relevant were New England and Utah but not the "Pacific Northwest," consisting of Alaska, Washington, Oregon, part of Utah and part of Montana, nor "Inland Empire" area of the Pacific Northwest. Clayton Act, § 7, 15 U.S.C.A. § 18.

3. Monopolies ⇐24(13)

Evidence in antitrust suit established that automatic sprinkler fire protection manufacturer which was acquired by communications corporation was not the dominant competitor in the lines of commerce of automatic sprinkler systems and devices, power piping and pipe hangers in the national market or the six New England states or Utah. Clayton Act, § 7, 15 U.S.C.A. § 18.

4. Monopolies ⇐24(13)

Evidence in antitrust suit did not establish that automatic sprinkler fire protection manufacturer would gain marketing and promotional competitive advantages from merger with communications corporation in package or system

selling, affiliation with communications corporation's fire insurer subsidiary, access to financial resources and advertising, foreign expansion, vertical foreclosure, central fire alarm station installation or reciprocal dealing. Clayton Act, § 7, 15 U.S.C.A. § 18.

5. Monopolies ⇐20

Statute prohibiting acquisition by one corporation engaged in commerce of stock of another corporation where the effect of such acquisition may be substantially to lessen competition is not concerned with possibilities but is concerned only with those mergers which may have demonstrable and substantial anticompetitive effects; it is not concerned with certainties and there is no requirement that the anticompetitive power manifest itself in anticompetitive action before the statute can be called into play. Clayton Act, § 7, 15 U.S.C.A. § 18.

6. Monopolies ⇐20

Whether opposed acquisition of one corporation in stock of another corporation violates Clayton Act is whether it is probable that a merger will have anticompetitive effect. Clayton Act, § 7, 15 U.S.C.A. § 18.

7. Monopolies ⇐20

When size of market share foreclosed to competition as result of vertical integration aspects of a merger is de minimus, competition cannot be said to have been substantially lessened and merger does not violate statute prohibiting acquisition of one corporation of stock of another where effect may be substantially to lessen competition. Clayton Act, § 7, 15 U.S.C.A. § 18.

8. Monopolies ⇐24(13)

Evidence in antitrust suit did not establish that merger of communications corporation and automatic sprinkler fire protection manufacturer would confer marketing and promotional competitive advantages on the manufacturer with respect to its power piping manufacturing operations because of package or system selling, access to communications corporation's financial resources, foreign expansion or reciprocal dealing. Clayton Act, § 7, 15 U.S.C.A. § 18.

9. Monopolies ⇐24(13)

Evidence established that communications corporation's acquisition of automatic sprinkler fire protection manufacturer would not give manufacturer anticompetitive advantages in the sale of pipe hangers nor have effect of substantially lessening competition in the pipe hanger market. Clayton Act, § 7, 15 U.S.C.A. § 18.

10. Monopolies ⇐20

Statute proscribing corporate mergers having anticompetitive effects proscribes only those mergers the effect of which may be substantially to lessen competition and not those mergers which tend to substantially increase economic concentration. Clayton Act, § 7, 15 U.S.C.A. § 18.

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ITT—GRINNELL MERGER
INDEX

	Page
QUESTION PRESENTED	22
JURISDICTION	22
PRIOR PROCEEDINGS	22
PARTIES TO THE ACTION	23
I. CLAIM THAT GRINNELL IS THE DOMINANT COMPETITOR IN CERTAIN LINES OF COMMERCE AND IN CERTAIN SECTIONS OF THE COUNTRY	24
(A) LINES OF COMMERCE	24
(1) Automatic Sprinkler Devices	24
(2) Automatic Sprinkler Systems	24
(3) Power Piping	24
(4) Pipe Hangers	25
(B) SECTIONS OF THE COUNTRY	25
(1) Entire United States: For All Lines of Commerce	25

(2) Regional Areas: For Installation of Automatic Sprinkler Systems ... 25
(a) New England ... 25
(b) State of Utah ... 25
(c) Pacific Northwest (government's claim) ... 25
(d) Inland Empire (government's claim) ... 26
(C) DOMINANCE OF GRINNELL ... 26
(1) Power Piping Market ... 26
(2) Pipe Hangers Market ... 27
(3) Automatic Sprinkler Devices Market 27
(4) Automatic Sprinkler Systems Market 27
SUMMARY UNDER THIS SECTION ... 29
II. CLAIM THAT MERGER WILL CONFER MARKETING AND PROMOTIONAL COMPETITIVE ADVANTAGES UPON GRINNELL ... 29
[REGARDING AUTOMATIC SPRINKLER DEVICES AND AUTOMATIC SPRINKLER SYSTEMS MARKETS]
(A) PACKAGE OR SYSTEM SELLING ... 30
(B) AFFILIATION WITH HARTFORD ... 33
(C) ACCESS TO ITT'S FINANCIAL RESOURCES AND ADVERTISING ... 37
(D) FOREIGN EXPANSION ... 38
(E) VERTICAL FORECLOSURE ... 39
(F) CENTRAL STATIONS ... 40
(G) RECIPROCAL DEALING ... 41
SUMMARY UNDER THIS SECTION ... 47
III. CLAIM REGARDING POWER PIPING ... 48
IV. CLAIM REGARDING PIPE HANGERS ... 50
V. CREDIBILITY OF WITNESSES ... 51
VI. CLAIM OF ECONOMIC CONCENTRATION ... 51
CONCLUSIONS ... 55

MEMORANDUM OF DECISION AFTER TRIAL ON THE MERITS

TIMBERS, Chief Judge:

QUESTION PRESENTED

In this action brought by the United States (government), pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25 (1964), for declaratory and injunctive relief to enjoin the acquisition by International Telephone and Telegraph Corporation (ITT) of the stock of Grinnell Corporation (Grinnell) as an alleged violation of Section 7 of the Clayton Act, 15 U.S.C. § 18 (1964), the essential question for determination by the Court after trial on the merits is whether, upon the entire record, the government has sustained its burden of establishing that "in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition." [1]

For the reasons stated below, the Court holds that the government has not sustained its burden upon the essential issue set forth above. Defendant accordingly is entitled to judgment dismissing the complaint.

JURISDICTION

The Court has jurisdiction over the subject matter and the parties pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25 (1964), and 28 U.S.C. § 1337 (1964).

Venue is properly laid in this District pursuant to 15 U.S.C. § 22 (1964); and in any event there has been no objection to venue. Rule 12(h)(1), Fed.R.Civ.P.

PRIOR PROCEEDINGS

On October 21, 1969, after an evidentiary hearing, the Court filed a Memorandum of Decision [2] denying the government's motion for a preliminary injunction to enjoin the proposed acquisition of Grinnell by ITT, but directing that a hold separate order be entered to preserve the status quo pending trial

1. 15 U.S.C. § 18 (1964).

2. United States v. International Telephone & Tel. Corp., 306 F.Supp. 766 (D.Conn.1969).
In an attempt to keep the instant opinion within reasonable bounds and to avoid unnecessary repetition, frequent references will be made herein to the earlier preliminary injunction opinion, to the extent that it is here applicable.
The earlier opinion, in addition to denying a preliminary injunction to enjoin the proposed ITT–Grinnell merger, also denied a preliminary injunction to enjoin the proposed ITT–Hartford Fire Insurance Company merger and directed the entry of a hold separate order with respect to that merger. 306 F.Supp. at 800–802.
The instant opinion, except to the limited extent hereinafter indicated, does not deal with the ITT–Hartford merger. That is the subject of a separate action, Civil Action No. 13.320, the trial of which on the merits has been assigned to begin September 15, 1971, by agreement of counsel.

and decision on the merits. An order implementing the preliminary injunction decision was entered October 30, 1969.[3]

It is undisputed that, following ITT's acquisition of all of Grinnell's stock on October 31, 1969, ITT has maintained Grinnell as a separate and viable company in accordance with the Court's order of October 30, 1969.

After a number of pre-trial conferences and following extensive discovery proceedings by both sides, an 18 day trial on the merits began at Bridgeport on September 15, 1970 and concluded on October 30, 1970. The record before the Court consists of the pleadings; some 498 documentary exhibits; extracts from 59 depositions; and the testimony of 53 witnesses who appeared at the trial.

Immediately upon the conclusion of the evidence, the Court heard oral arguments. Counsel thereupon agreed upon a schedule for serving and filing proposed findings of fact and conclusions of law, together with post-trial briefs, the last of which were filed on December 14. As with the earlier preliminary injunction proceedings, the Court has been greatly assisted by the oral arguments, briefs and other post-trial papers from extraordinarily able counsel on both sides.

PARTIES TO THE ACTION

There are now two parties to the instant action: the government as plaintiff, and ITT as defendant. The action against Grinnell as a defendant was dismissed on September 9, 1970, pursuant to a stipulation between counsel, all of the stock of Grinnell having been acquired by ITT.

For purposes of the instant opinion, the description of the government as a party and of Grinnell as a former party, set forth in the earlier opinion, 306 F Supp. at 770–71, is applicable here.

Likewise, the earlier description of ITT, 306 F.Supp. at 770–71, is sufficient for present purposes, except that the continued growth of ITT, as measured by such indicia as number of employees, sales, assets and acquisitions, should be up-dated as follows: it employs approximately 353,000 persons;[4] during 1969, it had consolidated sales and revenues of slightly less than $5,500,000,000, consolidated net income of $234,000,000 and consolidated assets of approximately $5,200,000,000, at the end of that year;[5] it is the ninth largest industrial corporation in the United States according to Fortune Magazine;[6] approximately 40%–45% of its consolidated sales and revenues and income are from operations outside the United States and Canada;[7] during the period 1955 through 1969, its total consolidated sales and revenues increased from $448,000,000 to almost $5,500,000,000;[8] during the decade 1960–1969, it acquired 85

3. 306 F.Supp. at 799–800.

4. GX 3, p. 6.
Record references in this opinion will be as follows:

GX_____	Government exhibit.
DX_____	Defendant exhibit.
Moynagh, Tr._____	Trial testimony (name of witness, followed by page of typewritten trial transcript).
Groos, DT_____	Deposition testimony (name of witness, followed by page of typewritten deposition transcript).
Widmar, Tr._____	Statement by trial counsel (name of counsel, followed by page of typewritten trial transcript).

5. GX 3, pp. 11, 36.

6. GX 10.

7. GX 3, p. 14.

8. GX 10.

domestic corporations;[9] and at the end of 1969, it had in excess of 200 subsidiaries worldwide engaged in a wide variety of enterprises.[10]

Perhaps the most significant change with respect to the status of ITT since the Court's earlier opinion is that what there were described as the proposed merger agreements, 306 F.Supp. at 772–73, have now been consummated: the ITT-Grinnell merger on October 31, 1969,[11] the ITT-Hartford merger on May 26, 1970.[12]

I

CLAIM THAT GRINNELL IS THE DOMINANT COMPETITOR IN CERTAIN LINES OF COMMERCE AND IN CERTAIN SECTIONS OF THE COUNTRY

[1] The law is well settled that when a company which is the dominant competitor in a relatively oligopolistic market is acquired by a much larger company, such acquisition violates Section 7 of the Clayton Act if the acquired company gains marketing and promotional competitive advantages from the merger which will further entrench its position of dominance by raising barriers to entry to the relevant markets and by discouraging smaller competitors from aggressively competing. The effect of such a merger will be substantially to lessen competition. FTC v. Procter & Gamble Co., 386 U.S. 568 (1967); General Foods Corp. v. FTC, 386 F.2d 936 (3 Cir. 1967), cert. denied, 391 U.S. 919 (1968); United States v. Ingersoll-Rand Co., 320 F.2d 509 (3 Cir. 1963); *accord*, Allis-Chalmers Mfg. Co. v. White Consolidated Industries, Inc., 414 F.2d 506 (3 Cir. 1969), cert. denied, 396 U.S. 1009 (1970); United States v. Wilson Sporting Goods Co., 288 F.Supp. 543 (N.D.Ill.1968). And see this Court's analysis of the controlling law in its earlier preliminary injunction opinion in the instant case. 306 F.Supp. at 775–76.

The Court turns directly, therefore, to the question whether the evidence establishes that Grinnell is the dominant competitor in the relevant product and geographic markets, i. e. "in any line of commerce in any section of the country."

(A) LINES OF COMMERCE

For the purpose of determining whether Grinnell is the dominant competitor in the lines of commerce here involved, the Court finds that the following are the relevant product markets or lines of commerce:[13]

(1) *Automatic Sprinkler Devices*

Automatic sprinkler devices are among the component parts necessary to construct automatic sprinkler systems for fire prevention. They include sprinklers, alarms and related equipment. They represent a small percentage of the value of an installed sprinkler system.[14]

(2) *Automatic Sprinkler Systems*

Automatic sprinkler systems constitute complete installations designed to protect buildings against fire. They are composed of pipe, pipe fittings, pipe hangers, valves and sprinkler devices.

(3) *Power Piping*

Power piping systems are used in utility power generating plants and in segments of the process industries, primarily chemical and paper. Such piping is subjected to extreme temperatures and pressures. The power piping industry

9. GX 6.

10. GX 4.

11. GX 2, p. 1.

12. GX 9.

13. For a brief description of some of these products, see 306 F.Supp. at 771–72 and 771 n. 3.
The government also has alleged in its complaint a probable lessening of competition in the *power pipe hanger* line of commerce as a result of the ITT Grinnell merger. The government either has abandoned its claim in this regard, see 306 F.Supp. at 771 n. 3, or it views the power pipe hanger market as a submarket of the pipe hanger market or of the power piping market. *Infra*, pp. 50–51.

14. Groos, DT 12; *compare* GX 368 *with* GX 371.

includes the fabrication and erection of such systems.

(4) *Pipe Hangers*

Pipe hangers are support devices from which piping is suspended. They are, among other things, components of automatic sprinkler systems and of power piping systems. They vary greatly in type depending on the size and weight of pipe to be suspended and the material from which the support is to hang.

(B) SECTIONS OF THE COUNTRY

(1) *Entire United States: For All Lines of Commerce*

[2] There is no dispute between the parties that the relevant geographic market for each line of commerce is the national market. The entire United States therefore is the "section of the country" within which the effects of ITT's acquisition of Grinnell upon the relevant lines of commerce are to be measured.

(2) *Regional Areas: For Installation of Automatic Sprinkler Systems*

The government further claims that, with respect to the installation of automatic sprinkler systems, there are four regional areas, each of which should be regarded as a "section of the country" for the purpose of measuring the impact of this acquisition upon competition in the installation of automatic sprinkler systems. The four regional areas claimed by the government and the Court's finding as to each may be summarized as follows:

(a) NEW ENGLAND

The six New England states (with the exception of southwestern Connecticut, which is regarded as part of the New York metropolitan area) constitute a well-defined regional area and an "area of effective competition". Sprinkler installations in this area, with some exceptions, are made by companies with headquarters located in the area.[15] The Court holds that this is a "section of the country", and therefore a relevant regional area, for the purpose of measuring the effect of the acquisition on the installation of automatic sprinkler systems.

(b) STATE OF UTAH

The State of Utah, for essentially the same reasons stated above with respect to the New England states, constitutes a well-defined regional area and an "area of effective competition". The Court holds that this is a "section of the country", and therefore a relevant regional area, for the purpose of measuring the effect of the acquisition on the installation of automatic sprinkler systems.

(c) PACIFIC NORTHWEST
(government's claim)

The government claims that a regional area, referred to as the "Pacific Northwest",[16] also constitutes a "section of the country". This area comprises the States of Alaska, Washington, Oregon, part of Idaho (north of a line extended eastward from the Washington-Oregon boundary), and part of Montana (west of, and including, Great Falls, Butte and Helena).

There is no evidence that a single installer of automatic sprinkler systems operates throughout the Pacific Northwest area. Nor is there any evidence, with respect to any installer who has more than one office in this area, that the total area of operation is in any way coterminous with the Pacific Northwest. In short, the record does not support a finding that the Pacific Northwest is an "area of effective competition."[17]

The Court holds that the Pacific Northwest is not a "section of the country" for the purpose of measuring the competitive effect of the acquisition on the installation of automatic sprinkler systems.

15. Moynagh, Tr. 244; GX 376-381.

16. GX 424.

17. Ellington, Tr. 841; Larson, Tr. 541; GX 380; GX 410; GX 404; GX 405; GX 407; GX 383; Hinds, Tr. 591.

(d) INLAND EMPIRE
(government's claim)

The government also claims that a regional area, referred to as the "Inland Empire",[18] constitutes a "section of the country". This area comprises the Pacific Northwest, defined above, except there is excluded the States of Alaska and Oregon and that part of Washington west of the Cascade Mountains. The government would include in the Inland Empire area portions of Montana which are separated by the Continental Divide from the rest of the Inland Empire; and would exclude from the Inland Empire area a portion of Idaho north of the Salmon River and south of the extended Washington-Oregon border—an area which geographically would appear to be more closely related to the so-called Inland Empire than to any other region.

From the foregoing delineation of the Inland Empire, it is clear that it is not a well-defined regional area; and the Court is mindful that Section 7 "does not call for the delineation of a 'section of the country' by metes and bounds as a surveyor would lay off a plot of ground." United States v. Pabst Brewing Company, 384 U.S. 546, 549 (1966). See United States v. Bethlehem Steel Corporation, 168 F.Supp. 576, 602 (S.D.N.Y. 1958). Moreover, the evidence does not show that it is an "area of effective competition". The only sales office of Grinnell located within the Inland Empire competes throughout Montana and in southern, as well as northern, Idaho.[19] Of the four witnesses called by the government who compete in portions of the Pacific Northwest region, none testified that he competed to a significant degree in the Inland Empire area.[20] There is no evidence showing the probable effect of the merger upon competition in the Inland Empire.

The Court holds that the Inland Empire is not a "section of the country" for the purpose of measuring the competitive effect of the acquisition on the installation of automatic sprinkler systems.

(C) DOMINANCE OF GRINNELL

[3] The Court makes the following findings with respect to Grinnell's position in each of the relevant markets, with particular focus upon the government's claim that Grinnell is the dominant competitor in the relatively oligopolistic product markets defined above.

(1) *Power Piping Market*

Granted that Grinnell is one of three wholly integrated companies in the power piping industry and accepting arguendo the government's claim that Grinnell is "the largest factor in the power piping industry",[21] the evidence is significantly deficient in establishing Grinnell as the dominant competitor in this market.

A substantial number of companies are capable of *fabricating* power piping systems,[22] at least one of which has a larger fabrication volume than Grinnell.[23] With respect to *erection*, many power piping systems are erected by large engineering and contracting companies,[24] some of which have a larger volume than Grinnell.[25] At least one of Grinnell's competitors in 1969 had a substantially larger combined fabrication-erection volume than Grinnell.[26]

Concededly, no industry statistics or other data have been introduced to show directly the share of the market of any

18. GX 425.

19. GX 383.

20. Larson, Tr. 536 et seq.; Hinds, Tr. 589 et seq.; Dahn, Tr. 678 et seq.; Ellington, Tr. 837 et seq.

21. Schwab, DT 16; Prebor, DT 36.

22. Pease, DT 43–47; Carry, DT 8; McCully, DT 5–6, 29.

23. Schwab, DT 13.

24. Carry, DT 13–16; McCully, DT 11–12; Schwab, DT 11–14; Patterson, DT 20, 22; Prebor, DT 38–40.

25. Carry, DT 15–16; Schwab, DT 14.

26. McCully, DT 3.

company in the industry. The closest approximation, based on the most reliable inferences permitted by the record as to the size of the total market, is that Grinnell's total 1969 fabrication and erection contracts in amount of $39,783,866[27] represented somewhere between 4% and 13% of the power piping market.[28] This is wide of the mark of dominance.

(2) *Pipe Hangers Market*

In the pipe hangers market, again no market or industry statistics have been introduced to show the share of the market of any company in the industry. Granted that Grinnell is the leading manufacturer of pipe hangers in the United States, that the five largest companies account for approximately 55% of the total market and that Grinnell's 1969 domestic sales of $15,534.272 represented 20% of the total domestic market[29] (it has been so stipulated), this still does not establish Grinnell as the dominant competitor in a market apparently as widely dispersed, as balanced and with as many competitors as this one.

(3) *Automatic Sprinkler Devices Market*

In the automatic sprinkler devices market, Grinnell was the largest of 14 domestic manufacturers in 1969, based on its sales of $8,134,590 for that year which represented 23% of the domestic market.[30] Grinnell has three good size competitors, two of whom have grown more rapidly than Grinnell in recent years,[31] and one of whom is believed by its president to be larger than Grinnell today.[32] There are a number of smaller competitors who maintain a position in the market. Such evidence does not warrant a finding that Grinnell is the dominant competitor in the manufacture of automatic sprinkler devices.

Moreover, since the evidence shows that Grinnell installs practically all of its sprinkler devices, there is no significant competition between Grinnell and other manufacturers in the sale of such devices.[33] Any effect of the acquisition upon competition in the automatic sprinkler devices line of commerce necessarily would be reflected only through the effect such acquisition would have upon competition in the installation of automatic sprinkler systems.

(4) *Automatic Sprinkler Systems Market*

In the automatic sprinkler systems installation market, the evidence comes closest, of any of the four product markets here involved, to permitting reasonably accurate findings as to Grinnell's share of that market.

In the national market, Grinnell is the largest installer, its 1969 domestic sales of $77,000,000[34] representing approximately 20% of the total domestic market;[35] and it has two large competitors in the national market.

In the two regional markets which the Court has recognized as "sections of the country" for the purpose of testing the competitive effects of the merger, the government asserts that Grinnell's share of the New England market in 1969 was 24.5%[36] and its share of the State of Utah market in 1969 was 44.3%.[37]

27. GX 1, item 38.

28. Carry, DT 64, 17–18; Pease, DT 135.

29. GX 415.

30. GX 368.

31. Meyer, Tr. 1551, 1576; Fee, Tr. 130–31; GX 1, item 36, shows that Grinnell's sales increased approximately 30% during the period 1965–69.

32. Meyer, Tr. 1551, 1576.

33. Fee, Tr. 133.

34. GX 371 (figures for Grinnell's Canadian and Mexican offices subtracted from total).

35. GX 370B gives Grinnell a market share of 21.2%, a figure based on incomplete data. See GX 370C, App. A; DX E. The 21.2% figure also includes more than 80,000 man hours for a Grinnell subsidiary which no longer exists. GX 370B, n. 1.

36. GX 374B.

37. GX 382.

The record shows that Grinnell's share of the New England market actually was substantially less than 24.5%, for the total market against which Grinnell's position must be measured does not include (a) some 48 businesses listed as automatic sprinkler installers in the yellow pages of the current New England Telephone Company directory;[38] (b) a number of other businesses identified as automatic sprinkler installers;[39] and (c) sales in New England by persons from outside the New England area.[40]

Grinnell's share of the State of Utah sprinkler installation market in 1969 was 44.3%—a figure which may not be fairly representative of Grinnell's market position in view of its corresponding figures of 14.6% for 1968 and 26.5% for the first eight months of 1970, both periods being subsequent to Grinnell's opening a sprinkler installation office in Utah.[41]

In other areas of the country, moreover, Grinnell is the largest installer; but in a number of important markets Grinnell is not the largest installer, e.g., St. Louis, Los Angeles, Philadelphia, Chicago, Minneapolis-St. Paul, Cleveland, Kansas City, Detroit and New York.[42]

Among the significant factors in this market pattern are (1) the fact that Grinnell's share of the national market declined sharply during the five year period immediately preceding the merger;[43] (2) the fact that Grinnell has a larger share of the national market is not necessarily a measure of its relative market strength in any given area; (3) the fact that Grinnell has a larger share of the national market does indicate that it engages in business throughout the country, as compared to its hundreds of competitors whose businesses are confined to local or regional areas; and (4) the fact that many sprinkler installers of various sizes have grown rapidly despite competition with Grinnell indicates that there are no significant barriers to entering the sprinkler installation business.[44]

Those witnesses at the trial who have had experience in both the manufacture of sprinkler devices and in the installation of sprinkler systems testified that there is no significant advantage to a manufacturer in being engaged also in installation, and vice versa.[45]

Some of Grinnell's installer competitors purchase their sprinkler products from Grinnell;[46] but witnesses called by both sides did not list Grinnell among their principal suppliers,[47] and others did

38. DX E.

39. GX 370, App. A, includes a number of New England companies whose man hours the government has not ascertained.

40. See, *e. g.*, Port. Tr. 1794–95; Aldridge, Tr. 1883.

41. DX D; DX AB–AF.

42. DX C (St. Louis); Carden, Tr. 365–66 (Los Angeles); Connelly, Tr. 945–46 (Chicago); Curran, Tr. 1004 (Philadelphia); Peil, Tr 1071 (Minneapolis-St. Paul); Raskin, Tr. 1747 (Cleveland); Lewis, DT 11 (Kansas City); Glanz, DT 21–22 (Detroit); Hodges, DT 42 (New York City).

43. GX 1, item 36.

44. See, *e. g.*, Escue, Tr. 372, 389 (0 to $1 million in 4 years); Chafin, Tr. 422, 444 (same); Hills, Tr. 1607 (double in 5 years); Colquitt, DT 4–5 (quadruple in 7 years); E. Smith, DT 3–4 (double in 2 years); Corley, DT 31–32 (double in 7 years); Glanz, DT 36–37 (more than double in 5 years); Wilson, DT 8 (same); Barrett, DT 15 (more than sextuple in one office in 5 years).

While there are barriers to entry into the manufacture of sprinkler *devices*, such barriers are unrelated to the dominance of any manufacturing company and there is no evidence that they will be affected by ITT's acquisition of Grinnell. See Fee, Tr. 77–78.

45. See Somers, Tr. 1467–68; Meyer, Tr. 1558 (no advantage for manufacturer to engage in installation). And see Meyer, Tr. 1558; Hauth, Tr. 1665–66 (no advantage for installer to engage in manufacturing).

46. Hodges, DT 11–12; Coleman, Tr. 160–61; Peil, Tr. 1045; Aldridge, Tr. 1883; Grenning, DT 13; Crook, DT 9, 35–36.

47. Dahn, Tr. 704; Connelly, Tr. 945; Krumm, Tr. 1776; Crook, DT 9; Barrett, DT 4; Glanz, DT 18–21; Akonom, DT 11–13; Corley, DT 58.

not consider themselves dependent on Grinnell for their sprinkler products.[48]

While Grinnell sprinkler devices frequently are specified by architects and others in connection with sprinkler system installations, such specifications almost invariably are on an "or equal" basis.[49] The evidence clearly establishes that the specification of a particular brand of sprinkler device, whether on an "or equal" basis or otherwise, provides no significant competitive advantage to the company whose product is specified nor any disadvantage to a company whose product is not specified.[50]

Upon the entire record, the Court finds that the evidence does not establish that Grinnell is the dominant competitor in the automatic sprinkler systems installation market, i. e., neither in the national market nor in either of the two relevant regional markets.

SUMMARY UNDER THIS SECTION

To summarize regarding the relevant product and geographic markets here involved and the government's claim that Grinnell is the dominant competitor in such markets, the Court concludes as follows:

(A) The following lines of commerce or product markets have been established:

Automatic sprinkler devices
Automatic sprinkler systems
Power piping
Pipe hangers

(B) With respect to each of the above listed lines of commerce, the entire United States is a relevant geographic market, and therefore a section of the country, within which the competitive effects of the acquisition on each line of commerce appropriately may be measured.

With respect to the installation of automatic sprinkler systems as a line of commerce, each of the following regional areas also constitutes a section of the country for the purpose of measuring the competitive effects of the acquisition:

New England
State of Utah

The claimed Pacific Northwest and Inland Empire regional areas do not constitute sections of the country for this purpose.

(C) As for the government's claim that Grinnell is the dominant competitor in the relatively oligopolistic product markets set forth above, the Court holds that the evidence establishes that Grinnell is not the dominant competitor in any relevant product or geographic market.

II

CLAIM THAT MERGER WILL CONFER MARKETING AND PROMOTIONAL COMPETITIVE ADVANTAGES UPON GRINNELL

[REGARDING AUTOMATIC SPRINKLER DEVICES AND AUTOMATIC SPRINKLER SYSTEMS MARKETS]

The Court having concluded, upon the entire record, that the evidence does not support the government's claim that Grinnell is the dominant competitor in any of the relevant markets, that should end the case. A bolder Court would enter judgment for defendant and proceed no further.

In view of the likelihood of appellate review and having regard for the enormous expenditure of time and effort on the part of all concerned with respect to the remaining issues in the case, it does appear prudent for the Court to decide such issues and to make appropriate findings and conclusions thereon.

Before doing so, however, the Court believes that it would be remiss if it did not state unequivocally that, in its opin-

48. Larson, Tr. 586; Lowery, Tr. 1490; Hills, Tr. 1608; Hauth, Tr. 1669–70; Groos, DT 48; Hawley, DT 5–6.

49. Chafin, Tr. 448–49; Callison, Tr. 1035; Lowery, Tr. 1498–99; Ford, Tr. 1590; Brown, Tr. 1706–07; Krumm, Tr. 1782.

50. Chafin, Tr. 454–55; Lowery, Tr. 1500; Ford, Tr. 1590; Brown, Tr. 1707; Krumm, Tr. 1782–83.

ion, this is not even a close case on the issue of Grinnell's dominance. It is not merely a case where the government has failed to sustain its burden of proof on that issue; it is a case where the overwhelming preponderance of the credible evidence clearly establishes that Grinnell is *not* the dominant competitor in *any* relevant market. Having lived with this case for nearly a year and a half, having heard scores of witnesses testify and having carefully studied hundreds of documents and thousands of pages of deposition and trial testimony, this Court is left with an unusually firm conviction that Grinnell, although a large and leading competitor, clearly is not a *dominant* competitor within the recognized meaning of that term in the antitrust field.

[4] Despite that conviction, however, the Court will assume arguendo in this section of the opinion that Grinnell is a dominant competitor in the automatic sprinkler devices and installation markets,[51] and will proceed to consider the government's claim that Grinnell as such will gain marketing and promotional competitive advantages from the merger in the following specific respects:[52]

(A) Package Or System Selling
(B) Affiliation With Hartford
(C) Access To ITT's Financial Resources And Advertising
(D) Foreign Expansion
(E) Vertical Foreclosure
(F) Central Stations
(G) Reciprocal Dealing

(A) PACKAGE OR SYSTEM SELLING

The government claims that the merger will give Grinnell a competitive marketing advantage by creating an opportunity for Grinnell to include additional products in its automatic sprinkler line and to engage in package or system selling. In short, the government contends that this is a mixed or product extension conglomerate merger. Such a merger has been defined as one involving the acquisition of a company manufacturing or selling a product "related to a product or products of the acquiring firm because it can be produced with much the same facilities, sold through the same distribution channels, or made a part of the same research and development efforts." Turner, Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv.L.Rev. 1313, 1315 (1965). See FTC v. Procter & Gamble Co., 386 U.S. 568, 577–78 (1967); Allis-Chalmers Mfg. Co. v. White Consolidated Industries, Inc., 414 F.2d 506, 518 (3 Cir. 1969), cert. denied, 396 U.S. 1009 (1970); General Foods Corp. v. FTC, 386 F.2d 936, 944 (3 Cir. 1967), cert. denied, 391 U.S. 919 (1968); United States v. Wilson Sporting Goods Co., 288 F.Supp. 543, 548 (N.D.Ill.1968).

It is undisputed that Grinnell has not in fact engaged in package or system selling during the period of more than a year since the merger was consummated.[53] Nor does the government claim to have adduced evidence that this competitive practice is planned or that it is imminent. As stated in its brief, "The Government does not contend that ITT–Grinnell will exercise these opportunities [for product extension] tomorrow or even next year, but what is crucial is the fact that these opportunities are present."[54]

[5, 6] While the line between "possibilities", "certainties" and "probabili-

51. Government counsel, with commendable candor, has informed the Court that his chief concern is directed toward the automatic sprinkler installation market (Widmar, Tr. 2180).
The Court nevertheless will rule upon the government's claims with respect to the other product markets.

52. The government does not contend that any *one* of these marketing and promotional competitive advantages will result in a substantial lessening of competition; it contends that their cumulative effect will have anticompetitive consequences (Widmar, Tr. 9).

53. The same applies to the other marketing and promotional competitive practices discussed below.

54. Government's Post-Trial Brief, p. 74.

ties" may be difficult to draw in a given case, such difficulty does not relieve the Court of its obligation to do so in accordance with established legal standards, as the Court pointed out in its earlier opinion. 306 F.Supp. at 774. Section 7 is not concerned with *possibilities*. "The statute is concerned only with those mergers which may have demonstrable and substantial anticompetitive effects." United States v. Atlantic Richfield Co., 297 F.Supp. 1061, 1066 (S.D.N.Y.1969); see Brown Shoe Co. v. United States, 370 U.S. 294, 317 (1962). Nor is Section 7 concerned with *certainties*; since it is designed to stop anticompetitive practices "in their incipiency", there is no requirement that "the anticompetitive power manifest itself in anticompetitive action before § 7 can be called into play." FTC v. Procter & Gamble Co., *supra*, at 577. Upon its face, Section 7 makes it clear that the statute is concerned with *probabilities*. Brown Shoe Co. v. United States, *supra*, at 323. The statutory standard is whether it is *probable* that a merger will have an anticompetitive effect, viz. whether its effect "*may be* substantially to lessen competition" (Emphasis added).[55]

The government's package or system selling claim at the time of the preliminary injunction hearing was directed almost entirely to an attempt to show that automatic sprinklers could be included in an overall plumbing, heating and air conditioning package. 306 F.Supp. at 777. The evidence at the trial on the merits established beyond question that this type of package would not significantly enhance Grinnell's sprinkler business;[56] and it demonstrated that sprinkler systems never have been packaged with other construction products by Grinnell or by other sprinkler companies, despite abundant opportunities to do so.[57]

In the light of such evidence, the government appears now to have abandoned its claim that there is any likelihood, much less a probability, that Grinnell sprinkler systems will be packaged with ITT plumbing, heating and air conditioning products in such a way as to benefit Grinnell sprinkler sales.

Instead, the government now has cast its package or system selling claim in more sophisticated terms and with new radiations.

The government's primary claim at trial was that a single mechanical contracting company bidding sprinkler work together with plumbing, heating and air conditioning installations would have an advantage over a specialized sprinkler contractor bidding sprinkler work only. The premise upon which the government's argument in this respect rests—that ITT as a mechanical contractor will engage in installation of plumbing, heating and air conditioning equipment, or will make it possible for Grinnell to do so—is of doubtful validity. The evidence shows that ITT is not engaged in the mechanical contracting business of installing plumbing, heating or air conditioning systems; that it has never contemplated entering that business; and that there are compelling business reasons why it is most improbable that ITT ever would enter that business, e. g., the fact that ITT manufactures some air conditioning and heating hardware would strongly deter its entry into the mechanical contracting business, despite the government's claim to the contrary.[58]

55. This distinction between *possibilities*, *certainties* and *probabilities* applies of course to the Court's evaluation of the evidence with respect to each of the alleged marketing and promotional competitive advantages to be considered in this section of the opinion.

56. Hills, Tr. 1616–17; Port, Tr. 1796; Aldridge, Tr. 1895–96; Taylor, Tr. 1944. See Ellington, Tr. 862–63; Glanz, DT 13.

57. Hodges, Tr. 2040, 2061–62; Corley, DT 57; Somers, Tr. 1457; Meyer, Tr. 1544–45.

58. Woerthwein, Tr. 1828–29; Will, Tr. 1852–53, 1877. *Compare* Petronis, Tr. 1334.

41-581 O - 74 - 15

An understanding of the specialized character of sprinkler installation work is necessary properly to evaluate the government's claim in this respect. The majority of significant sprinkler companies throughout the country specialize in sprinkler work only, and do not engage in plumbing, heating or air conditioning work.[59] Most sprinkler work is awarded on the basis of bids that are confined to sprinkler installations. Most general contractors invite and receive separate sprinkler bids, rather than requiring that sprinkler work be bid to mechanical contractors for inclusion in a package bid.[60] Such preference as general contractors may have for dealing with mechanical contractors able to offer a package including sprinklers stems from a desire for installation coordination [61]—a preference which does not require a sprinkler contractor to be a mechanical contractor as well in order to avail himself of it.[62] The advantage, therefore, to a mechanical contractor of being engaged in the sprinkler business, is of doubtful significance, if any.[63] Accordingly, even if there were evidence (and there is none) that ITT or Grinnell as a result of the merger were to engage in mechanical contracting work, the Court would be unable to find that Grinnell thereby would gain a substantial competitive advantage in its sprinkler business.

A further radiation of the government's package or system selling claim at trial was that Grinnell would be able to offer to mechanical contractors or others a package consisting of an *installed* sprinkler system together with *uninstalled* plumbing, heating and air conditioning products, having in mind that other ITT companies manufacture such products. The Court finds the government's claim that Grinnell would gain an advantage over its competitors from such a package to be wholly unsupported by the evidence. Prior to its acquisition by ITT, Grinnell sold hundreds of products to the construction industry but never packaged them with sprinklers [64]—a course it was not inhibited from pursuing had it been thought to be advantageous. No witness at trial, including

The Court has carefully weighed, in the context of the entire record, the evidence that during the past two years a Grinnell subsidiary has engaged in mechanical contracting work on three projects in the South. The Court is satisfied that this activity appropriately may be regarded as the exception that proves the rule: it was necessitated by special problems having nothing to do with the ITT–Grinnell merger; the record is uncontroverted that such activity will not be expanded; and such activity had no impact whatsoever upon Grinnell's automatic sprinkler business. Pease, Tr. 2083–88.

59. Moynagh, Tr. 268–69; Carden, Tr. 354–55; MacDonald, Tr. 418–19; Callison, Tr. 1034; Lowery, Tr. 1491; Ford, Tr. 1581–82; Brown, Tr. 1702; Aldridge, Tr. 1895; Corley, DT 53–54.

60. Moynagh, Tr. 265–66; Carden, Tr. 320; Escue, Tr. 382; Stevens, Tr. 532–33; Smith, Tr. 827; Lowery, Tr. 1491; Ford, Tr. 1581; Krumm, Tr. 1777; Aldridge, Tr. 1889; Taylor, Tr. 1955; Corley, DT 52; White, DT 10.

61. Escue, Tr. 382; Stevens, Tr. 508–09; Jose, Tr. 668–71; Connelly, Tr. 927–28; McGilvray, Tr. 961; Noble, Tr. 1088–89.

62. The mechanical contractor's installation coordination which stems from a mechanical "package" can be utilized by a sprinkler contractor through bidding to the mechanical contractor. See Noble, Tr. 1089–90; McGilvray, Tr. 991–92; E. Smith, DT 21; Corley, DT 48; MacDonald, DT 19; Crook, DT 26. It is also evident that an independent sprinkler contractor may have an advantage over a mechanical contractor with its own sprinkler division. The sprinkler contractor can bid to several mechanical contractors. The mechanical contractor can submit but one package bid which includes sprinklers. Mechanical contractors do not accept sprinkler bids from other mechanical contractors. See Raskin, Tr. 1728–29.

63. In this connection, the Court has taken into account the evidence at trial that some mechanical contractors who offer a package of plumbing, heating, air conditioning and sprinkler work have a bidding advantage over a contractor who bids only sprinkler work; as well as the evidence to the contrary.

64. Hodges, Tr. 2040, 2061–62; Corley, DT 57.

some with experience in both mechanical contracting and sprinkler installation, testified that he would be interested in or concerned about such a package.[65] Such witnesses did make it clear that packaging requires products with a functional relationship to one another.[66] Mechanical contractors would have no interest in purchasing such a package;[67] nor would the ability of ITT–Grinnell to offer such a package (assuming evidence not adduced) give them any competitive concern.[68] Grinnell's sprinkler contractor competitors see neither a demand for nor any advantage in being able to offer such a package.[69] Grinnell's sprinkler device manufacturer competitors have seen no advantage in packaging with sprinklers other products they manufacture.[70] An experienced manufacturer of mechanical hardware believes such a package would not be feasible to offer.[71]

In short, the government has failed to show that there is any likelihood that there will be a "significant integration in the production, distribution or marketing" of automatic sprinkler systems with other ITT companies. General Foods Corp. v. FTC, *supra*, at 944. The Court finds that the record sharply distinguishes the instant case from the situations in FTC v. Procter & Gamble Co., *supra*, General Foods Corp. v. FTC, *supra*, and United States v. Wilson Sporting Goods Co., *supra*, where substantial merger advantages were shown in terms of advertising or use of common distribution outlets.

The Court holds that the government has not sustained its burden of establishing that Grinnell will gain any competitive advantage from the merger in the form of opportunities for package or system selling.

(B) AFFILIATION WITH HARTFORD

The government also claims that Grinnell will gain competitive marketing advantages from the ITT–Grinnell merger through its affiliation with Hartford. The government's claim in this respect is based upon the close relationship between the fire insurance and automatic sprinkler industries; and more particularly upon the fact that the prospect of a substantial reduction in insurance rates frequently is a motivating factor, among others,[72] in reaching a decision to install a sprinkler system.[73]

Whether, based upon these known facts, the evidence has established that Grinnell will gain substantial advantages over its competitors by virtue of Grinnell's affiliation with Hartford, is the central factual issue for determination here.

A large portion of the evidence upon this issue focused upon the government's contention that Grinnell will gain a competitive advantage from its affiliation with Hartford by receiving leads for sprinkler business from Hartford and from Hartford agents, and by becoming the beneficiary of recommendations to potential sprinkler customers from such sources. This is one of the major areas in the trial testimony where it has been necessary for the Court as the fact finder to apply the recognized tests for determining the credibility of witnesses and the weight to be attributed to their testimony.[74]

65. Connelly, Tr. 923, et seq.; McGilvray, Tr. 956, et seq.; Hawley, DT 11–12; Glanz, DT 47; Offutt, DT 12–13; E. Smith, DT 8–9, 11.

66. Connelly, Tr. 950–51; Petronis, Tr. 1334–35, 1344; Newton, DT 49.

67. Hawley, DT 11–12.

68. E. Smith, DT 8–9.

69. Lowery, Tr. 1492–93; Ford, Tr. 1584; Hills, Tr. 1618–19; Port, Tr. 1796–97; Groos, DT 20.

70. Somers, Tr. 1457; Meyer, Tr. 1544–45.

71. Will, Tr. 1857.

72. *E.g.*, Fee, Tr. 127–29; Stevens, Tr. 516; Somers, Tr. 1472; Meyer, Tr. 1563–64; Hauth, Tr. 1677.

73. Fee, Tr. 96–97; Hauth, Tr. 1684; Raskin, Tr. 1758.

74. *Infra*, p. 51.

There was some testimony that a few sprinkler installers have received a substantial amount of their business from insurance sources. As to those witnesses who so testified, some admitted that their companies had unusual capabilities and specializations;[75] others were unable to substantiate their estimates on cross examination;[76] and some demonstrated that their estimates included business clearly not derived from any insurance source.[77] The one government witness who came closest to specifying sprinkler business which he believed originated from insurance sources happened to be one of the trial witnesses whose testimony raised very grave doubts with the Court as to his credibility; indeed, defendant's evidence very substantially refuted his testimony in material respects.[78]

There also was testimony that in some instances sprinkler contractors hear of prospective sprinkler business from insurance agents and that insurance agents occasionally refer their clients to sprinkler contractors. Most of the witnesses on this subject, however, testified that when sprinkler leads do come from insurance sources they come from independent agents rather than from insurance companies.[79] There was no evidence that Hartford itself is in a position to give any significant number of insurance leads or recommendations to Grinnell.[80]

The consensus of those witnesses who testified on the subject of insurance leads, and particularly those who struck the Court as being worthy of belief, was that insurance leads and recommendations actually play an insignificant role in the sprinkler industry.[81] Such leads usually relate to existing buildings rather than to new structures;[82] and sprinkler work on existing buildings is a minor part of sprinkler contracting,[83] believed by sprinkler contractors to be relatively undesirable work.[84]

The significance of insurance leads furthermore must be evaluated in light of the highly competitive nature of the sprinkler business; and that applies to sprinkler work originating from insurance sources.[85] Sprinkler contracts are awarded for the most part on the basis of competitive bids. Recommendations of an insurance company or its agents accordingly have little or no effect. The

75. Chafin, Tr. 444–45; Sweitzer, Tr. 883.

76. Carden, Tr. 317, 342–43; Larson, Tr. 553, 573; Hinds, Tr. 600–01, 639–44.

77. Carden, Tr. 344–54; Larson, Tr. 573–82.

78. *Compare* Beal, GX 417 *with* DX LL through ZZ *and* DX AM through AQ.

79. *E.g.*, Moynagh, Tr. 250; Jose, Tr. 674; Callison, Tr. 1026; Hauth, Tr. 1678.

80. See GX 1, item 9; Potter, Tr. 2069; Sink, DT 18–19.

81. Moynagh, Tr. 269–71 (insurance leads cover 1.5% to 2% of his total sales); McGilvray, Tr. 973 (insurance contacts were "very limited"); Escue, Tr. 379–80 (two jobs from insurance leads in four years); Curran, Tr. 1005 (received insurance inquiries only "occasionally"); Jose, Tr. 675 (closed only one or two insurance jobs in two years); Colquitt, DT 27–28 (one insurance lead in past year); Crook, DT 37–38 (no concern over insurance leads); MacDonald, DT 10 (no insurance leads in over one year); Coleman, Tr. 187 (does not follow up insurance leads). See also: Lowery, Tr. 1494–95; Ford, Tr. 1587; Hills, Tr. 1611; Brown, Tr. 1703; Raskin, Tr. 1731; Krumm, Tr. 1778; Port, Tr. 1797; Aldridge, Tr. 1896; Taylor, Tr. 1945; White, DT 5; Lawton, DT 25; Groos, DT 27.

82. Moynagh, Tr. 270; Chafin, Tr. 455; Dahn, Tr. 690; Sweitzer, Tr. 890–92; Peil, Tr. 1077; Augustine, Tr. 1172–73; Hauth, Tr. 1678–79; Brown, Tr. 1704; Krumm, Tr. 1780; Port, Tr. 1798; Aldridge, Tr. 1897; Grenning, DT 74; Harms, DT 30.

83. Moynagh, Tr. 264; Lowery, Tr. 1490; Ford, Tr. 1580; Hauth, Tr. 1670; Raskin, Tr. 1728; Krumm, Tr. 1776; Aldridge, Tr. 1888.

84. Moynagh, Tr. 266–67; Krumm, Tr. 1776–77; Aldridge, Tr. 1888.

85. Larson, Tr. 583; Jose, Tr. 675; Curran, Tr. 1009; Lowery, Tr. 1495–96; Ford, Tr. 1587; Raskin, Tr. 1755–56; Krumm, Tr. 1779; Harms, DT 29–30; E. Smith, DT 21.

controlling factor is the bid rather than a recommendation.

Many automatic sprinkler systems are installed in large buildings insured by insurance pools or groups of insurance companies which are not subject to the control of a particular insurer.[86] Such pools give sprinkler specifications but they do not recommend manufacturers or installers.[87] There is no basis for believing that such insurance pools would recommend Grinnell sprinklers simply because of Grinnell's affiliation with Hartford.

Insurance agents testified that even when asked to recommend sprinkler contractors they refer the customer to the yellow pages of the telephone directory or recommend that they contact four to six reputable companies.[88] Other insurance agents called by the government testified that, even though they might recommend a sprinkler company affiliated with an insurance company which they represented,[89] they nevertheless would advise their clients to obtain competitive bids and would expect them to do so.[90]

In the light of the foregoing evidence with respect to the relationship generally in the industry between insurance leads and sprinkler work, the Court turns to the evidence specifically regarding Hartford and Grinnell in connection with this marketing practice. All of Hartford's fire insurance is written through some 13,228 independent agents and 942 brokers.[91] They typically act for a number of different insurance companies.[92] Characteristically they value their independence and they want their clients to understand that they are acting in their clients' best interests.[93] Despite the availability of some 14,170 Hartford agents and brokers, the government was not able to adduce testimony from any of them to the effect that they would favor Grinnell as a result of its affiliation with Hartford. Nor was there any evidence that any Hartford agent or broker had reason to believe he would be favored by Hartford in return for his favoring Grinnell; and there was evidence just to the contrary.[94]

Some indication of the actual effect of an affiliation between a property and casualty insurance company and a large manufacturer of automatic sprinkler devices may be gleaned from the results of the acquisition of Star Sprinkler Corporation by the INA Corporation in 1968.[95] Star distributes its products through some 140 licensees.[96] A number of insurance witnesses who deal with INA testified that the INA–Star merger has had no effect on their practices so far as sprinkler companies are concerned.[97] None of the Star licensees called by either the government or defendant testified that he had received any insurance leads or recommendations or other competitive benefits as a result of the INA–Star merger; and some of them disclaimed any such effect.[98] Despite the availability of some 140 Star licensees, the

86. Raskin, Tr. 1739; Retelle, Tr. 1969–70, 1982; Smythe, Tr. 2000–01; Abbott, Tr. 2020; Potter, Tr. 2072–73.

87. Meyer, Tr. 1569; Retelle, Tr. 1979–80; Abbott, Tr. 2019–20; Potter, Tr. 2071–72; DX BB, ¶¶ 5–7; DX DD, ¶¶ 2, 3.

88. Retelle, Tr. 1979; Smythe, Tr. 1995; Abbott, Tr. 2013–14.

89. Augustine, Tr. 1188; Slawsby, Tr. 1229.

90. Augustine, Tr. 1206; Slawsby, Tr. 1237. See also Harms, DT 29–30; DX U, AJ.

91. GX 1, item 11.

92. GX 1, item 11; Hauth, Tr. 1679; Wyatt, DT 13–15.

93. Slawsby, Tr. 1234; Smythe, Tr. 1998; Abbott, Tr. 2022. See also DX CC, ¶ 4.

94. Smythe, Tr. 1999–2000; Abbott, Tr. 2017–22. See also Potter, Tr. 2070–71.

95. Meyer, Tr. 1543, 1549.

96. Meyer, Tr. 1545.

97. Smythe, Tr. 1998–2000; Abbott, Tr. 2017–18.

98. Carden, Tr. 303; Smith, Tr. 835–36; Sweitzer, Tr. 908–09; Curran, Tr. 1004; Port, Tr. 1799–1800; Aldridge, Tr. 1897–98; Harms, DT 5–8; MacDonald, DT 10; Coffutt, DT 19; E. Smith, DT 13; Wilson, DT 29–30.

government adduced no evidence that either INA or Star had requested INA agents to favor Star licensees in any way, that any INA agent had done so, or that any INA agent believed he could benefit in his relations with INA by doing so. Two witnesses called by the government who were *not Star licensees* testified they had received leads from insurance agents representing INA despite the fact that these witnesses had competitors who *were Star licensees*.[99]

The chief executive of Star testified that when Star became affiliated with INA he decided that it would not be in the best interests of Star to draw upon its relationship with INA to promote the sale of Star sprinklers or otherwise to rely upon the identification of Star with INA.[100] This is substantially the same view held by the head of Grinnell's sprinkler operations, namely, that if Grinnell were to receive favored treatment from Hartford this would result in a negative reaction from the rest of the insurance industry, to Grinnell's detriment.[101]

This leads to the evidence which strikes the Court as having the most probative force of all upon the issue of whether Grinnell will gain a substantial competitive advantage from its affiliation with Hartford, namely, that it simply would not be in Grinnell's business interests to attempt to exploit in any way its relationship with Hartford. In short, the evidence overwhelmingly demonstrates that Grinnell would stand to lose far more than it could gain from any exploitation of the Hartford affiliation.

The evidence on this is concise but convincing. While Hartford is a large insurance company,[102] its total share of the domestic fire insurance market is only 4.4% and its total share of the sprinklered risk market is approximately 2.4%.[103] The government's own witnesses recognized the desirability of maintaining good relations with as many different insurance sources as possible.[104] The evidence shows that too close an alliance between Hartford and Grinnell would cause other insurance interests to be less friendly with Grinnell and less inclined to furnish leads to, or to make recommendations of, Grinnell;[105] testimony by witnesses called by both sides established beyond any question that the result of any such relationship would be to deter non-Hartford agents from recommending Grinnell sprinklers, although under other circumstances they might have made such a recommendation.[106]

As for the government's relatively incidental claims of other advantages[107] to be gained by Grinnell from its affiliation with Hartford (i. e. other than receiving insurance leads for sprinkler business), the Court does not believe that they warrant detailed discussion other than to note that the Court finds that the evidence does not support the government's contentions with respect to the alleged advantages of obtaining tentative sprinklered rates from insurance rating bureaus;[108] of manipulating rate struc-

99. Hinds, Tr. 616-17; Connelly, Tr. 943.

100. Meyer, Tr. 1569.

101. Hodges, DT 112.

102. GX 418.

103. GX 1, item 12.

104. Fee, Tr. 144; Corley, DT 44-45.

105. Coleman, Tr. 228; Locke, Tr. 712; Peil, Tr. 1078; Lewis, DT 14; MacDonald, DT 11. *Compare* Fee, Tr. 113 (this company's licensees reluctant to disclose prospects to finance companies lest the names be divulged to their competitors).

106. Abbott, Tr. 2016-17; Smythe, Tr. 2003; Slawsby, Tr. 1234-35; Augustine, Tr. 1207.

107. These incidental claims are urged by the government here distinctly as secondary to its main claim relating to insurance leads, as at the time of the preliminary injunction hearing. 306 F.Supp. at 778 n. 23.

108. Access to the tentative sprinklered rate is not important for the sprinkler contractor. Lowery, Tr. 1497; Hills, Tr. 1613; Brown, Tr. 1704-05; Raskin, Tr. 1743-44; Krumm, Tr. 1781; Port, Tr. 1800; Aldridge, Tr. 1898-99; DX T.

tures or sprinkler standards to favor Grinnell;[109] or of providing an insurance-sprinkler package.[110] Nor does the record even remotely support the government's claim that the ITT-Hartford merger may spark other insurance-sprinkler combinations and foster a trend toward concentration;[111] and much less does the record support the government's claim that such a supposititious trend would tend to lessen competition in the sprinkler industry.

The Court holds that the government has not sustained its burden of proving that Grinnell will gain competitive marketing advantages from the ITT-Grinnell merger through its affiliation with Hartford.

(C) ACCESS TO ITT'S FINANCIAL RESOURCES AND ADVERTISING

The government further claims that Grinnell will gain a competitive marketing advantage through access to ITT's financial resources and comprehensive advertising program; more particularly, it is claimed that through ITT's finance companies Grinnell will be able to finance the purchase and leasing of sprinkler systems on a larger scale than it now does, and that through access to ITT's advertising expertise and experience Grinnell will be able to expand its advertising and sales promotion programs.

The question naturally arises, in light of this claim, whether Grinnell *needs* such financing and advertising help. The answer provided by the trial record in this case is unequivocally in the negative.

The evidence is uncontroverted that Grinnell already is in a position to offer credit and leasing arrangements to sprinkler customers without financing assistance from ITT and is capable itself of expanding such financing as broadly as is desirable commercially.[112]

Financing from non-sprinkler company sources is available to purchasers with satisfactory credit.[113] Finance companies such as Phillips and CIT regularly finance sprinkler installations.[114]

Actually, as the government witnesses testified, sprinkler work requiring financing is not considered desirable work,[115] and most sprinkler companies receive very few inquiries regarding financing.[116] One of the largest manufacturers of sprinkler devices, Star Sprinkler Corporation, offers financing services through CIT to its 140 licensees; Star does the paper work and has widely publicized the availability of such financing; but Star's licensees have shown almost no interest in it.[117]

The Court has taken into account the evidence of instances where sprinkler companies turned down prospective sprinkler work because of their inability

A sprinkler contractor can easily calculate an approximate sprinklered rate from accessible information. Meyer, Tr. 1565–66; Hills, Tr. 1613–14; Raskin, Tr. 1744; Port, Tr. 1800; Retelle, Tr. 1974–75; Augustine, Tr. 1197; Wyatt, Tr. 2033; Potter, Tr. 2073. Rating bureaus will provide a tentative sprinklered rate to a sprinkler contractor upon request. Meyer, Tr. 1567; Ford, Tr. 1588; Hauth, Tr. 1680–81; Brown, Tr. 1704; Aldridge, Tr. 1898. Rating bureaus would be reluctant to provide tentative sprinklered rates on a wholesale basis. Augustine, Tr. 1195; Retelle, Tr. 1977–79.

109. Meyer, Tr. 1569; Retelle, Tr. 1979–80; Abbott, Tr. 2019–20; Potter, Tr. 2071–72; DX BB, ¶¶ 5–7; DX DD, ¶¶ 2, 3.

110. Abbott, Tr. 2017; Cohn, DT 9–11; Fleming, DT 23. *Compare* Fee, Tr. 101–02.

111. Government's Post-Trial Brief, p. 51.

112. Hodges, Tr. 2048; Luke, DT 44.

113. Larson, Tr. 583.

114. Port, Tr. 1802; Grenning, DT 53; Barrett, DT 5.

115. Moynagh, Tr. 266; Ellington, Tr. 864.

116. *E.g.*, Lowery, Tr. 1497–98; Ford, Tr. 1589; Brown, Tr. 1706; Krumm, Tr. 1781.

117. Meyer, Tr. 1567–68; Carden, Tr. 363; Aldridge, Tr. 1892–93.

to finance it;[118] but there is no evidence of such sprinkler work going to a competitor which itself was able to finance it.[119]

With respect to advertising, the Court finds that it simply is not a significant factor in the sprinkler industry. Witnesses from various sprinkler companies, including Grinnell, testified that advertising is unimportant in the award of sprinkler work;[120] that it is not worthwhile;[121] and, even if they were in a position to invest more in advertising, that they would not do so.[122]

Grinnell has had an advertising budget of less than $100,000 for automatic sprinkler systems—far less than it could provide itself if in its business judgment it considered more advertising prudent.[123] Star Manufacturing Company's entire advertising budget is $5,600[124]—again indicating the relative unimportance of advertising in the sprinkler industry.

Upon this record the Court finds that Grinnell's access to ITT's financial resources and more comprehensive advertising program cannot be viewed realistically as a competitive advantage since Grinnell is fully capable itself of providing financing, leasing and advertising to the extent business judgment dictates, even absent the ITT-Grinnell merger. *Cf.* United States v. Wilson Sporting Goods Co., 288 F.Supp. 543, 553 (N.D.Ill. 1968).

The Court holds that the government has not sustained its burden of proving that the merger will confer upon Grinnell a competitive marketing advantage through access to ITT's financial resources and advertising program.

(D) FOREIGN EXPANSION

The government also claims that the ITT-Grinnell merger will give Grinnell a competitive advantage in the form of ITT assistance to Grinnell in its overseas expansion, thus leading to foreclosure of Grinnell's competitors from foreign markets[125] and, since profits earned abroad may be used to compete domestically, further resulting in lessening of competition in the domestic market.

The record clearly shows that prior to the merger Grinnell had already expanded into Europe;[126] and that it had done so without the type of assistance ITT might be in a position to provide, such as local contacts, staff support and labor relations.[127]

The leading sprinkler companies with which American companies must compete in Europe are European companies rather than Grinnell.[128] In fact, Grinnell is under a disability in the European market because another company has the rights to the Grinnell name in connection with sprinklers in Europe.[129]

The testimony of the only government witness who testified to a personal concern over the possibility of Grinnell's

118. *E.g.*, Moynagh, Tr. 255–56; Cardin, Tr. 324; Escue, Tr. 384–85.

119. *Compare* Hinds, Tr. 632–33, *with* Hodges, Tr. 2042–43. See also Peil, Tr. 1071.

120. Lowery, Tr. 1505; Brown, Tr. 1709; Aldridge, Tr. 1891; Taylor, Tr. 1951; Hodges, DT 135–36; Crook, DT 26–27.

121. Ford, Tr. 1592.

122. Port, Tr. 1803–04.

123. GX 348.

124. Meyer, Tr. 1558.

125. The Court noted in its earlier preliminary injunction opinion some doubt as to the legal basis for the government's claim in this regard, since Section 7 proscribes acquisitions the effect of which may be substantially to lessen competition "in any section of the country". 306 F.Supp. at 780. In view of evidence adduced by the government at the trial on the merits that profits earned abroad may be used to compete domestically, the Court accepts the legal basis for the government's claim; but, for reasons stated more fully below, the Court finds that the evidence does not support the government's claim of foreclosure of Grinnell's competitors from foreign markets.

126. Hodges, Tr. 2045–46; Rison, DT 52–53, 56–58.

127. DX AA, p. 2; Luke, DT 44.

128. Hodges, Tr. 2047; Groos, DT 17.

129. Hodges, Tr. 2047–48.

gaining an advantage in the European market from its affiliation with ITT must be taken with a grain of salt by the Court in evaluating his credibility and in determining what weight is to be given his testimony;[130] for his trial testimony expressing his concern in this respect appears to have been interjected as an afterthought and following no such suggestion in his prior affidavit and deposition when he was afforded an opportunity to state his objections in full.[131]

In any event, in view of the evidence that the automatic sprinkler market in the United States is just coming into its own [132] and is likely to grow dramatically in the future,[133] the Court finds that any substantial expansion of Grinnell in foreign countries, with or without ITT assistance, would probably benefit all United States sprinkler companies.[134] In short, far from foreclosing competitors, such expansion would create a larger market to be shared by all.

The Court holds that the government has not sustained its burden of establishing that the merger will foreclose Grinnell's competitors from foreign markets and thus result in a lessening of competition in the domestic market.

(E) VERTICAL FORECLOSURE

The government also claims that the ITT–Grinnell merger will have some of the characteristics of a vertical merger in that it will foreclose Grinnell's competitors from the ITT market for sprinkler systems.

While this is a new claim asserted by the government for the first time at trial and was not among its claims at the preliminary injunction hearing, 306 F.Supp. at 777–86, the legal basis for the claim is not open to question, having been clearly enunciated in Brown Shoe Co. v. United States, 370 U.S. 294, 323–24 (1962).

By common definition, a vertical merger is the acquisition of one company which buys the product sold by the acquiring company or which sells the product bought by the acquiring company. The government's vertical foreclosure claim here is based on the second clause of the foregoing definition.

[7] The short and conclusive answer to the government's vertical foreclosure claim is that ITT's purchases of sprinklers represents a *de minimis* part of the market. While the government points out that 55 sprinkler systems were installed in ITT facilities during the past five years [135] and that ITT contemplates installing approximately 22 new sprinkler systems during the next year, [136] the stark fact is that ITT's planned expenditures in amount of $731,635 for sprinkler systems during the 1970–1972 period [137] represents less than 1/10 of 1% of the total prospective sprinkler system business for those years.[138] When, as here, the size of the market share foreclosed to competition as the result of the vertical integration aspects of a merger is *de minimis*, there can be no Section 7 violation because in such a situation competition cannot be said to have been substantially lessened. Brown Shoe Co. v. United States, *supra*, at 329.

Furthermore, the uncontroverted evidence shows that since ITT's acquisition of Grinnell the latter has been given no favoritism in the award of sprinkler business from other ITT subsidiaries, having lost as well as won such business.[139] The "profit center" concept [140]

130. *Infra*, p. 51.

131. Fee, Tr. 139–42. *Compare* McNamara, Tr. 1302–08, 1318–19.

132. Stevens, Tr. 516.

133. Groos, DT 10.

134. Meyer, Tr. 1560–61.

135. GX 256.

136. GX 257.

137. *Id.*

138. The domestic sprinkler market in 1969 exceeded $350,000,000. GX 370B. It is expected to expand rapidly in the future. Stevens, Tr. 516; Groos, DT 10.

139. Hills, Tr. 1615–16; Taylor, Tr. 1939–42; DX AS.

140. Woerthwein, DT 49–50; Haufler, DT 155–56; Laughlin, DT 17; Somers, Tr. 1464–65. *Compare* GX 241–43 *with* DX Y.

around which ITT is organized is not conducive to vertical foreclosure. The individual profit centers purchase on the basis of price, quality and delivery;[141] one profit center in attempting to sell to another must earn its way;[142] in purchasing products normally the subject of competitive bidding, such bidding is done without favoritism between profit centers, as well as with outside companies;[143] and in some instances it is more difficult for an ITT company to sell to another ITT company than to sell to an outsider.[144]

The Court holds that the government has not sustained its burden of establishing its vertical foreclosure claim.

(F) CENTRAL STATIONS

The government also claims that the ITT–Grinnell merger will give Grinnell a competitive marketing advantage in that ITT will assist Grinnell in reentering the central station alarm business by giving it access to an ITT product known as "Digitor", and that such entry into the central station business in turn will give Grinnell substantial competitive advantages in the installation of automatic sprinkler systems.

The government's claim in this respect requires an analysis of the evidence upon the issues of (a) the alleged usefulness of Digitor in the central station business and (b) the relationship between central station business and the sale and installation of automatic sprinkler systems—all with a view to determining whether Grinnell will gain any substantial competitive advantages.

Digitor is an electronic system for monitoring alarm signals.[145] The person probably in the best position to evaluate its usefulness as a vehicle for entry into the central station business is Richard M. Garrett, the co-inventor of Digitor,[146] who testified as a government witness at the trial. Garrett formerly was employed by ITT, but not at the time of trial.[147] He testified that a number of other companies soon will have products serving the same function as Digitor which "will be equal or superior" to Digitor, and that "any large company deciding to develop a system now would have better, less expensive components at its disposal";[148] that Digitor is not the basic system he would like to use for central stations;[149] and that if he were going into the central station business he would not use Digitor.[150] Another central station witness called by the government testified that his company had studied Digitor and had found it to be "completely unacceptable".[151] And the senior vice president and manager of Grinnell's Fire Protection Division[152] testified that Grinnell does not plan to use Digitor in connection with any possible entry by Grinnell into the central station business because of its cost and certain technical problems it presents.[153]

Entirely apart from its affiliation with ITT, Grinnell has considered reentering the central station alarm business,[154] this being a field in which Grinnell had been engaged through certain subsidiaries (the largest being ADT) prior to divestiture of those subsidiaries pursu-

141. *Id.*

142. Geneen, DT 30; Will, Tr. 1859–60.

143. Morrow, DT 58–60A; Lowe, DT 27, 34–35. There have been instances in which the heads of particular profit centers urged their personnel to use other ITT companies. These situations occurred where the purchases were made by individual employees and where the purchasing performance of the profit center could not be affected. GX 222, 397. Such instances are rare and not uniform. Laughlin, DT 17.

144. Keller, DT 43–44.

145. GX 1, item 22.

146. Garrett, Tr. 719.

147. Garrett, Tr. 718–19.

148. Garrett, Tr. 765–67, 775.

149. *Id.*

150. *Id.*

151. Witteck, Tr. 1272–73.

152. Hodges, Tr. 2037.

153. Hodges, Tr. 2044–45, 2059.

154. Hodges, Tr. 2044; Rison, DT 64–65, 68–69.

ant to an antitrust decree.[155] In that case the government did not challenge the affiliation between Grinnell and its central station companies on the ground that it conferred any competitive advantage upon Grinnell with respect to its sprinkler sales.[156] And at the trial of the instant case witnesses called by both sides testified to the absence of any such advantage to Grinnell during the period of its ownership of ADT [157]—a period during which any advantage in sprinkler sales from affiliation with a central station company presumably would have manifested itself.

The evidence at the trial of the instant case, from witnesses with experience in the installation of sprinkler systems and central station equipment, established overwhelmingly that, even if ITT were to assist Grinnell in reentering the central station business, Grinnell would not thereby gain a significant competitive advantage in the sale and installation of automatic sprinkler systems.[158] Central station companies are not a significant source of leads for sprinkler companies. Most sprinkler witnesses testified they never had received a lead from a central station source.[159] Despite the suggestion of one witness that central station companies might hear about sprinkler work as a result of their periodic inspections of customers' properties,[160] this would not be the case with a company using Digitor,[161] for, as the government concedes in its brief, "[a]dmittedly, the 'Digitor', because of its advanced automated technology, cuts down on the number of personal contacts a central station company need have with its customers. . . ." [162]

Finally, the Court finds nothing in the record to explain why, if installation of central station equipment and automatic sprinklers at the same time were desirable, that could not be accomplished readily by sprinkler and central station companies coordinating their installation work without the necessity of affiliation between them.

The Court holds that the government has not sustained its burden of proving that the merger will give Grinnell an advantage in reentering the central station business or, assuming such reentry, that Grinnell thereby will gain an advantage in the sale and installation of sprinklers.

(G) RECIPROCAL DEALING

The major marketing and promotional competitive advantage which the government claims Grinnell will gain from the ITT–Grinnell merger is an enhancement of Grinnell's market position through reciprocal dealing caused by ITT's large purchasing power. More particularly, the government asserts that the merger will give rise to "reciprocity", referring to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its goods or services; [163] and to "reciprocity effect", re-

155. United States v. Grinnell Corp., 384 U.S. 563 (1966).

156. *Id.*

157. Stevens, Tr. 524; Hauth, Tr. 1682; Fleming, DT 42; Rison, DT 69; Hodges, DT 97; White, DT 43; Meyer, Tr. 1558.

158. Lowery, Tr. 1493; Ford, Tr. 1585; Brown, Tr. 1702–03; Krumm, Tr. 1778; Aldridge, Tr. 1893–94; Taylor, Tr. 1947. *Compare* Dix, Tr. 1356–60.

159. Escue, Tr. 393; Larson, Tr. 583; McGilvray, Tr. 997; Lowery, Tr. 1493; Meyer, Tr. 1551–52; Brown, Tr. 1702; Raskin, Tr. 1748; Krumm, Tr. 1778; Aldridge, Tr. 1893; Taylor, Tr. 1946. *Compare* McIntire, DX AT *with* Moynagh, Tr. 290–92. Also *compare* Taylor, Tr. 1947–49 and DX AL *with* Corley, DT 32–33.

160. Hauth, Tr. 1688–89. See also Witteck, Tr. 1269.

161. Garrett, Tr. 736–37.

162. Government's Post-Trial Brief, p. 73.

163. Witnesses at the trial came up with somewhat less sophisticated definitions of "reciprocity", *e.g.*, MacDonald, Tr. 405 ("You scratch my back and I'll scratch yours"); Chafin, Tr. 431 ("Someone doing a favor in return for a favor"); Stevens, Tr. 494 ("I buy from you You buy from me").

ferring to the tendency of a company selling or desiring to sell to another company to channel its purchases to that company.

The legal basis for the government's claim of reciprocal dealing has been enunciated in such decisions as FTC v. Consolidated Foods Corp., 380 U.S. 592, 594 (1965); Allis-Chalmers Mfg. Co. v. White Consolidated Industries, Inc., 414 F.2d 506, 518–19 (3 Cir. 1969), cert. denied, 396 U.S. 1009 (1970); United States v. Ingersoll-Rand Co., 320 F.2d 509, 524 (3 Cir. 1963); United States v. General Dynamics Corp., 258 F.Supp. 36, 57–65 (S.D.N.Y.1966). But see United States v. Northwest Industries, Inc., 301 F.Supp. 1066, 1088–92 (N.D.Ill. 1969); United States v. Penick & Ford, Ltd., 242 F.Supp. 518, 521 (D.N.J.1965). And see also this Court's analysis of these decisions in its preliminary injunction opinion in the instant case. 306 F. Supp. at 783–86.

There are two essential factual requisites of the government's reciprocal dealing claim, in the light of which the evidence must be analyzed. First, whether the merger will create an opportunity for reciprocal dealing through a market structure conducive to such dealing. Second, whether such reciprocal dealing in fact is likely to occur, even if the merger were to create an opportunity for it. The Court turns directly to an analysis of the evidence to determine whether these essential requisites have been established.

It is common ground that the question of whether a merger will create a market structure conducive to reciprocal dealing is exceedingly complex. The answer depends upon a careful analysis of many variables. Among the factors believed to be relevant to the merger here under consideration are the extent to which ITT suppliers are actual or potential purchasers of sprinklers; whether sprinklers have product characteristics which lend themselves to reciprocal dealing; the scope of the market, represented by ITT, for products sold by ITT suppliers; the size and diversification of other companies to which ITT suppliers sell their products; and the degree to which the markets within which ITT suppliers operate are competitively structured. Turner, Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv.L.Rev. 1313, 1387–88 (1965); Brodley, Oligopoly Power Under the Sherman and Clayton Acts, 19 Stan.L.Rev. 285, 327 (1967). With the exception of the first two factors mentioned, there is little or no evidence in the present record; and with respect to the remaining critical factors the Court is unable to make appropriate findings one way or the other —a situation specifically referred to in the Court's preliminary injunction opinion in the instant case. 306 F.Supp. at 782.

There is no dispute that ITT is a substantial purchaser of goods and services from numerous domestic suppliers, including some of the nation's leading industrial concerns. The government's evidence shows that ITT purchased in excess of $840,000,000 of goods and services in 1968;[164] and that it made purchases in excess of $100,000 from industries which accounted for 71% of total new plant and equipment expenditures by manufacturing industries in 1966.[165] Defendant's evidence shows, however, that in most of the industries just referred to ITT actually purchased from only a small fraction of the companies in the industry.[166] The government's evidence itself indicates that ITT's purchases represent but an infinitesimal percentage of the sales of its suppliers.[167]

In view of the Court's observations above regarding the paucity of evidence with respect to certain factors critical to a determination of whether the merger will create a market structure conducive to reciprocal dealing, it should be noted that there is no evidence from which the Court may determine the percentage of new plant and equipment ex-

164. GX 183.
165. GX 188.
166. DX KK.
167. GX 187.

penditures made by companies from which ITT in fact purchases. And yet it is abundantly clear, and the Court finds, that the *number of companies from which ITT in fact purchases* is a more reliable measure of the maximum reciprocity and reciprocity effect potential of the ITT–Grinnell merger than the total *number of companies in those industries from which ITT purchases.* This is especially so in view of the absence of any evidence whatever of alleged reciprocity in the sprinkler industry involving a merely *potential* as opposed to an *actual* supplier in the sprinkler industry.

Indeed, the Court is persuaded by a preponderance of the evidence that reciprocity and reciprocity effect are not significant factors in the sprinkler installation industry. The government's witnesses, representing substantial experience in the sprinkler business, with few exceptions [168] testified to no instances of actual or suspected reciprocity involving their companies or any other companies.[169] And other witnesses with long experience in the sprinkler industry, including present and former employees of Grinnell, testified in convincing fashion that they had never encountered a single instance of actual or suspected reciprocity.[170] The Court attributes considerable weight to this evidence in view of the thousands of sprinkler contracts per year entered into by Grinnell [171] which has approximately 20% of the national sprinkler installation market.[172]

From the standpoint of the market structure of the sprinkler industry, there are significant factors which militate against reciprocity practices. A substantial and increasing proportion of sprinkler work is done for non-industrial customers—such as educational institutions, hospitals and retail establishments —which are not actual or potential ITT suppliers.[173] Most sprinkler work, for all classes of customers, is awarded on a competitive bidding basis, thus minimizing reciprocity and reciprocity effect potential.[174] While it is true that, even with competitive bidding, favoritism may be shown by giving one bidder an opportunity to match the lowest bid, this

168. The Court has taken into account those alleged instances of reciprocity to which some witnesses testified. Some were trivial in scope, in some instances involving "leads" rather than actual sprinkler work. Carden, Tr. 326–27, 355–60; Coleman, Tr. 210–11; MacDonald, Tr. 405–17; Chafin, Tr. 432; Stevens, Tr. 504–05; Dahn, Tr. 705–06; Smith, Tr. 821–23; Ellington, Tr. 854–56; Peil, Tr. 1060–61. Others occurred long ago and, even as to them, substantial doubt is raised by controverting evidence. *Compare* Coleman, Tr. 210–11 *with* DX Q; Carden, Tr. 326–27, 355–59 *with* DX V *and* Tr. 2121–22; MacDonald, Tr. 411 *with* DX R; Stevens, Tr. 504–05 *with* DX W; Smith, Tr. 821–23 *with* Somers, Tr. 1463–64, 1487 *and* Brown, Tr. 1699.

169. Moynagh, Tr. 239 et seq. (all his life); Esenc, Tr. 370 et seq. (14 years); Larson, Tr. 536 et seq. (24 years); Hinds, Tr. 589 et seq. (40 years); Sweitzer, Tr. 877 et seq. (24 years); Connelly, Tr. 923 et seq. (10 years); McGilvray, Tr. 956 et seq. (4 years); Curran, Tr. 1001 et seq. (28 years); Callison, Tr. 1023 et seq. (15 years).

170. Lowery, Tr. 1501 (19 years); Ford, Tr. 1590-91 (8 years); Hills, Tr. 1611 (5 years); Hauth, Tr. 1669 (41 years); Brown, Tr. 1708 (25 years); Krumm, Tr. 1783 (22 years); Port, Tr. 1795 (39 years); Aldridge, Tr. 1890 (16 years); Taylor, Tr. 1943–44 (20 years); White, DT 24–25 (more than 8 years).

171. See, *e.g.*, GX 375, 383 (one year's contracts from two of Grinnell's offices).

172. *Supra* note 35.

173. Meyer, Tr. 1563–64; Hauth, Tr. 1671; Carden, Tr. 310.

174. Coleman, Tr. 219–20 (85% of sprinkler work is competitively bid); Carden, Tr. 325 (94%–95%); Esenc, Tr. 377 (95%); Dahn, Tr. 707 (nearly 100%); Glanz, DT 51–52 (90%); Corley, DT 38 (85%–90%); Colquitt, DT 14 (98%); Crawford, DT 25–26 (95%); Lowery, Tr. 1490 (about totally); Meyer, Tr. 1563 (more than 85%); Ford, Tr. 1580 (75%–90%); Hills, Tr. 1609 (almost all); Hauth, Tr. 1672 (great majority); Raskin, Tr. 1730 (95%–100%); Krumm, Tr. 1777 (99.-9%); Port, Tr. 1795 (98%); Taylor, Tr. 194[illegible] (85%).

practice is contrary to the ethical standards of general contractors;[175] and it is self-defeating in that it has the undesirable effect of discouraging others from bidding in the future.[176] Finally, a large proportion of sprinkler work is done in connection with new construction where sprinkler installers bid largely to general and mechanical contractors rather than to owners, thus minimizing the likelihood of significant ITT purchases from industrial sources.[177]

The effectiveness of the market structure inhibitions against reciprocity in the sprinkler industry appears to be confirmed by looking at Grinnell prior to its acquisition by ITT, during which period Grinnell had no established policy against reciprocity in the sale of automatic sprinkler systems.[178] Despite some occasional deviations which were not successful,[179] the record shows that reciprocity was not a significant factor in Grinnell's sprinkler business before the merger.[180] The managers of two Grinnell field installation offices, whose depositions were taken by the government, testified that they never encountered reciprocity in any form.[181] Other former long-time employees of Grinnell testified that they had no knowledge of the practice.[182]

The evidence upon which the government relies to show reciprocity in the sprinkler industry relates for the most part to a period of time more than five years ago[183] and involves alleged reciprocity between Grinnell and certain steel companies.[184] As to the latter, five of the companies which allegedly had reciprocity interest in Grinnell and, in one case, in an ITT subsidiary,[185] have entered into antireciprocity consent decrees designed to assure against future reciprocity or reciprocity effect in their business conduct.[186] Moreover, as indicated below,[187] the consensus of those in the best position to know is that the focus upon the illegality of reciprocity practices in recent years has brought about a substantial decline in the incidence of such practices—a trend which the record in the instant case indicates is more likely to continue than to abate.

Despite Grinnell's substantial purchasing power prior to its merger with ITT, the Court finds that Grinnell did not receive any significant reciprocity favoritism from purchasers of sprinkler systems. The government, in response to an interrogatory propounded by defendant during the course of pre-trial discovery proceedings, specified seven instances upon which it relies in support of its claim that Grinnell, as the result of reciprocity, received sprinkler business it would not otherwise have received.[188] These seven instances may be summa-

175. Moynagh, Tr. 284; Ramsey, Tr. 1924–27.

176. Lowery, Tr. 1504–05; Meyer, Tr. 1564–65; Ford, Tr. 1591–92; Brown, Tr. 1708–09; Krumm, Tr. 1784–85; Aldridge, Tr. 1890–91.

177. *E.g.*, Moynagh, Tr. 265 (90% of sprinkler work is bid to general and mechanical contractors rather than to owners); Lowery, Tr. 1491 (80%); Brown, Tr. 1700 (70%); Crook, DT 8–9 (75%); Harms, DT 10 (60%–80%); Colquitt, DT 11 (75%–80%). See also Chafin, Tr. 446.

178. Hodges, Tr. 2059; Lawton, DT 2-75 to 2-76; Rison, DT 12.

179. Hodges, Tr. 2059.

180. Many of the government's so-called "reciprocity" exhibits regarding Grinnell show on their face that they do not relate to its sprinkler business. GX 27, 39, 45–49 (see DX K), 51, 52, 55–64, 72, 75, 77, 79–83, 90–95, 98, 105, 117–19. Other such government exhibits do not appear to have anything to do with Grinnell's sprinkler business. GX 43, 44, 50, 65–71, 73, 74, 76, 78, 86, 88, 89, 96, 97, 100–04, 106–12, 116A–B.

181. Taylor, Tr. 1943–44; White, DT 24–25.

182. Lowery, Tr. 1501; Brown, Tr. 1699, 1708; Krumm, Tr. 1783.

183. GX 16–18, 27–29, 39–40, 42–71, 84–86, 98 (not dated), 99–103, 113–15, 117.

184. GX 43 through GX 115.

185. GX 168–79.

186. DX EE, FF, GG, HHH and II.

187. *Infra* note 212

188. DX H.

rized as follows: in two instances, Grinnell received no favoritism at all, although attempts were made to convince Grinnell to the contrary;[189] in a third, Grinnell received no favoritism but merely a fair opportunity to compete;[190] in a fourth, Grinnell was the low bidder but with no indication of a special opportunity to rebid;[191] in a fifth, no sprinkler work was involved (and it has been so stipulated);[192] in a sixth, Grinnell received no work at all;[193] and in the seventh, there not only was no evidence that Grinnell received any favoritism but there was no evidence that it received a sprinkler job at all.[194] Other evidence adduced by the government indicated that Grinnell thought it had been favored because of reciprocity, whereas in fact it had not,[195] or that the reciprocity discussion failed to materialize in sprinkler work.[196]

Turning from the sprinkler industry and from Grinnell, the Court now directs its attention to the other party to the merger, ITT, to ascertain whether the evidence demonstrates that reciprocal dealing in fact is likely to occur. There are several aspects of ITT's organization and practices which are directly relevant. First, ITT is organized into a series of "profit centers", each managed and staffed by personnel whose business careers, advancement, financial rewards and reputations depend upon the success of the specific profit center with which the men are identified, rather than upon the performance of ITT as a whole.[197] These profit centers on occasion cooperate with one another,[198] as unrelated companies would cooperate;[199] but they do so only when it is in their mutual interest to do so.[200] The management of one profit center has no motivation to tailor its purchasing decisions to facilitate the sales of another profit center.[201] In selecting suppliers, the purchasing officer of each profit center deals with such variables as price, reliability of delivery, quality, willingness of suppliers to meet product emergencies, and the ability of suppliers to supply cost saving ideas; the imposition of reciprocity considerations in the purchasing of supplies, in addition to these variables, would strip the profit center of its essential purpose, namely, to show the maximum profit.[202]

Second, ITT does not collect purchasing and sales data necessary to identify reciprocal purchasing opportunities. ITT in the regular course of its business makes no overall compilation of its purchases by suppliers; nor is there any communication between ITT's headquarters marketing and purchasing departments, nor between ITT's different profit centers, such as to identify suppliers.[203] The only two compilations of purchasers made by ITT during the past ten years have been made at the specific request of the government (plaintiff herein).[204] Absent such compilations of purchases and communications between profit centers regarding purchases, ITT sim-

189. *Compare* GX 32 and 41 *with* DX A and B.

190. *Compare* GX 35 *with* Ramsey, Tr. 1916, 1922, 1931.

191. GX 38.

192. *Compare* GX 48 and 49 *with* DX K.

193. *Compare* GX 36 and 37 *with* DX K.

194. GX 84.

195. *Compare* GX 28–33 *with* DX A, L, N, O, P, S.

196. *Compare* Lawton, DT 2–39 through 2–41 *with* GX 16–26; DX K *with* GX 40 and 42. See also GX 113–15.

197. DX F, Attachment A, pp. 361–64; Geneen, DT 76.

198. Haufler, DT 90; Lowe, DT 32; Morrow, DT 16–20; Patton, DT 61–62; GX 1, item 2; GX 191–211.

199. Haufler, DT 90; Lowe, DT 32; Morrow, DT 16–17, 20–21.

200. Haufler, DT 90; Morrow, DT 18–19; Patton, DT 61–62; Woerthwein, DT 103.

201. DX F, Attachment A, pp. 361–64, 366–67; Geneen, DT 76–77.

202. DX F, Attachment A, pp. 366–70, 373–74.

203. Keller, DT 16; Patton, DT 8; Eddy, DT 9, 22.

204. DX F, Attachment A, p. 372; Patton, DT 15.

ply is in no position to respond to any supplier or potential supplier who may have purchased Grinnell sprinklers in the hope of selling goods or services to some other ITT profit center.[205]

Third, ITT has had a written policy against the practice of reciprocity since 1966.[206] This policy has been widely disseminated among ITT's purchasing and sales personnel on a continuing basis.[207] Witnesses with extensive ITT experience testified that they never have encountered any instance of reciprocity or reciprocity effect.[208] And the government has adduced no evidence that any ITT unit has ever obtained business as a result of reciprocity or reciprocity effect.[209]

In view of the foregoing, it is understandable that considerations of prospective reciprocity opportunities played no part in bringing about the ITT-Grinnell merger.[210]

In short, the Court finds that the substantial, credible evidence demonstrates that reciprocity and reciprocity effect is not likely to occur, even if the merger were to create the opportunity for reciprocal dealing, particularly in view of ITT's antireciprocity policy, implemented by the withholding of purchasing and sales data and the profit center organization of ITT. Even if ITT suppliers on their own initiative were to purchase sprinkler systems from Grinnell without pressure from ITT in an effort to gain favor with ITT and to obtain reciprocal sales, such suppliers would find that their purchases would not have the desired effect—as the record here makes abundantly clear.

Returning to the decisions[211] relied on by the government in support of its reciprocal dealing claim and without repeating this Court's analysis of those decisions in its preliminary injunction opinion, 306 F.Supp. at 783–86, it is pertinent to note that the record now before the Court is a vastly more comprehensive one than at the time of the preliminary injunction hearing. See Allis-Chalmers Mfg. Co. v. White Consolidated Industries, Inc., *supra*, at 527; United States v. Ingersoll-Rand Co., *supra*, at 523. Since the preliminary injunction hear-

205. DX F, Attachment A, pp. 384–86; Geneen, DT 74.

206. DX JJ.

207. Aibel, Tr. 1624–27.

208. Haufler, DT 154–55; Keller, DT 69–69A; Lowe, DT 17; Morrow, DT 56–57; Woerthwein, DT 40–43; Patton, DT 41–44, 53–57.

209. In view of the size of the ITT organization reflected by its large number of subsidiaries and its many employees, the isolated instances of alleged reciprocity relied upon by the government strike the Court as exceptions which again prove the rule that ITT has had no substantial or significant reciprocal dealing practices.
For example, the government points to certain proposed barter transactions arising out of unusual circumstances that appear to have no bearing upon any assistance that Grinnell might receive as a result of its affiliation with ITT. GX 130–33; Geneen, DT 64–66; GX 135–38; Morton, Tr. 1877–78. The government also relies upon certain correspondence which did not produce a meeting of the minds or any commercial relationship, and which involved a unique business situation resulting in major litigation between the parties to the correspondence. GX 123, 124; Aibel, Tr. 1630–43.
The closest the government has come to showing that certain individuals of an ITT company were attempting to practice reciprocity involved incidents which occurred shortly after ITT acquired that company and as to which there was no evidence that such attempts were successful. GX 139–49; Aibel, Tr. 1628–30; GX 168, p. 2 (the author of GX 168 was not an ITT employee). Those involved in one of these attempts, and the target of the other, were concerned solely with purchases from and sales to the particular ITT unit. GX 139–49; GX 170–79. Such evidence, aside from its isolated character, at most would not demonstrate that Grinnell's sprinkler market position would be enhanced by Grinnell's affiliation with ITT; for such evidence does not show that purchases of ITT units other than Grinnell would play any part in Grinnell's ability to sell sprinklers.

210. Luke, DT 14, 17, 19; Rison, DT 28–29.

211. *Supra*, p. 42.

ing, counsel and their investigators have had almost a full year of opportunity for extensive discovery. To the knowledge of the undersigned trial judge, that opportunity has been utilized by leaving no stone unturned in combing the files of the parties to the merger as well as the files of third parties; and in contacting directly hundreds of present and past personnel of ITT, Grinnell and other companies.

Upon the entire record, the Court holds that the government has not sustained its burden of establishing either that the merger will create an opportunity for reciprocal dealing through a market structure conducive to such dealing, or that reciprocal dealing in fact is likely to occur even if the merger were to create an opportunity for it.[212]

SUMMARY UNDER THIS SECTION

The Court, assuming that Grinnell is a dominant competitor in the automatic sprinkler devices and automatic sprinkler systems markets (despite the Court's holding above to the contrary),[213] concludes that Grinnell will not gain marketing and promotional competitive advantages from the merger in any of the following specific respects claimed by the government: package or system selling; affiliation with Hartford; access to ITT's financial resources and advertising; foreign expansion; vertical foreclosure; central stations; or reciprocal dealing.

The Court's conclusion in this respect is based upon the effects of the alleged marketing and promotional competitive advantages considered separately and cumulatively; neither separately nor cu-

212. While of course not binding on the parties or this Court, certain recent statements by present and former Assistant Attorneys General In Charge of the Antitrust Division are revealing in the perspective in which they place the reciprocity trend in the American business community.

Hon. Richard W. McLaren, the present head of the Antitrust Division, in commenting on the government's publicity against reciprocity practitioners and upon communications reflecting this program mailed to tens of thousands of business firms pursuant to consent decrees, has stated:

". . . [O]ur contacts with the Bar, with the business press, and others, lead us to believe that this effort has already left its mark. Firms that engaged in systematic reciprocity more or less in self-defense have tended to abandon it, and we have strengthened the hands of lawyers who have tried but heretofore have been unable to convince their clients that reciprocity was not only illegal but was likely to draw the government's fire. *I regard this program as being well on its way to success.*" (Reported in BNA Antitrust and Trade Regulation Report No. 447, p. X–13 (February 3, 1970)) (Emphasis added)

Hon. Donald F. Turner, the immediate past head of the Antitrust Division, in commenting on the potential for reciprocity in calculating the consequences of a conglomerate merger, has stated:

"I have come to believe that the potentiality of reciprocity deserves to be all but disregarded in calculating the likely consequences of a conglomerate merger. I shall assume, although there are others who earnestly suggest otherwise, that reciprocity is invariably a bad thing. I would disregard it in the merger area not because it may be neutral or beneficial in some circumstances, but rather because invidious reciprocity can be largely eradicated by a direct approach under existing law, an approach which has already been taken by the enforcement authorities and which I am quite confident the courts will uphold." (Statement of Donald F. Turner before the House Subcommittee on Antitrust and Monopoly, p. 10 (February 5, 1970)).

See also the recent speech by Hon. Lee Loevinger, former head of the Antitrust Division, reported in BNA Antitrust and Trade Regulation Report No. 480, pp. A–8, 9 (September 22, 1970); Report of President Nixon's Task Force on Productivity and Competition, BNA Antitrust and Trade Regulation Report No. 413, p. X–6 (June 10, 1969) (concludes that reciprocity is not currently a significant problem); Keeshan, Conglomerate Mergers and the Theory of Reciprocity, 22 Stan.L.Rev. 812 (1970).

213. *Supra*, pp. 26–29.

mulatively will they result in a substantial lessening of competition. *Cf.* United States v. Wilson Sporting Goods Co., 288 F.Supp. 543, 563 (N.D.Ill.1968).

III

CLAIM REGARDING POWER PIPING

[8] Although the Court has held that Grinnell is not the dominant competitor in the power piping industry,[214] it nevertheless will rule upon the government's claims that the ITT-Grinnell merger will confer marketing and promotional competitive advantages upon Grinnell in the power piping market, chiefly in the following respects: package or system selling; access to ITT's financial resources; foreign expansion; and reciprocal dealing.[215]

Preliminarily, it should be noted that the fact that Grinnell, as in the case of four of its competitors,[216] is an integrated company in the sense that it both fabricates and erects power piping systems does not confer a unique advantage. The evidence shows that when it is necessary to submit a single fabrication-erection bid, fabricators are able to enter into joint ventures or subcontracting arrangements with erecting companies and thus participate in the bidding.[217]

Nor does Grinnell have a significant competitive advantage in the fabrication-erection power piping market by virtue of its ability, along with two of its competitors,[218] to manufacture power pipe hangers which are used to fasten power piping systems to their physical supports.[219] Such hangers cost about 10% of a fabricated system and less than 5% of an installed system.[220] Fabricators who do not manufacture hangers obtain them from manufacturers on the basis of bids.[221] Two of the largest fabricator-erector companies in terms of volume of power piping systems have chosen not to manufacture hangers themselves, believing such to be uneconomic and unnecessary.[222]

With respect to the government's package or system selling claim, the record is barren of any evidence that power piping can be packaged or sold together with products manufactured by ITT. Substantially all solicitations for power piping bids are limited to the piping component of such systems.[223] When specifications call for additional items, such items are incidental in value and function to the primary system; and there is no basis for finding that a power piping bidder would have any significant advantage in being affiliated with the manufacturer of such items.[224] Many of the Court's findings made in connection with the government's packaging claim regarding automatic sprinkler devices and systems [225] are likewise applicable here—including the lack of any evidence to support the government's claim that ITT as a mechanical contractor will engage in the installation of plumbing, heating and air conditioning equipment, or will make it possible for Grinnell to do so; [226] and the evidence that prior to the merger Grinnell had sold hundreds of products

214. *Supra*, pp. 26–27.

215. At the preliminary injunction hearing the government withdrew its claim that the merger would cause a lessening of competition in the power piping market. 306 F.Supp. at 771 n. 3. And at the conclusion of the trial on the merits, government counsel informed the Court that his chief concern was not directed at the power piping market. (Widmar, Tr. 2180).

216. Carry, DT 12; McCully, DT 11; Schwab, DT 12–13; Patterson, DT 20.

217. Pease, DT 64–65; Schwab, DT 10–11.

218. Pease, DT 88; McCully, DT 14.

219. Pease, DT 90–91.

220. Carry, DT 17–18.

221. Schwab, DT 16–17; McCully, DT 14; Carry, DT 18–19; Patterson, DT 27–29.

222. Carry, DT 19; McCully, DT 15.

223. Pease, DT 100; Carry, DT 65; McCully, DT 20.

224. Pease, DT 100–01.

225. *Supra*, pp. 30–33.

226. *Supra*, pp. 31–32.

to the construction industry without packaging them with sprinklers.[227]

Despite some rather strong language[228] in support of the government's claim that access to ITT's financial resources will give Grinnell a competitive advantage in the power piping market, the evidence simply does not bear this out. As with the government's similar claim in the sprinkler market,[229] an appropriate inquiry here is whether Grinnell *needs* ITT's financial resources in the power piping business. There is no evidence whatever that Grinnell, with concededly very substantial financial resources aside from ITT, has ever been impeded in the power piping field for lack of funds; nor is there any evidence that additional financial resources would increase its competitive strength in the power piping market. A number of power piping witnesses who testified to a general dislike of the ITT-Grinnell merger were unable to specify how it would adversely affect their companies and some said they could foresee no impact at all.[230]

The government also claims, as it did with respect to the sprinkler market,[231] that ITT's foreign operations and influence will aid Grinnell's sale of power piping abroad, thus effectively foreclosing Grinnell's competitors from expanding into the overseas market, as well as stifling domestic competition. The evidence is overwhelmingly to the contrary. Essentially, the evidence shows that there is no significant foreign market for power piping fabricated in the United States and there are sound reasons for believing this will continue to be so.[232] There are enough power pipe fabricators and erectors in Europe and in Japan to supply those foreign markets; and these foreign companies enjoy labor and material costs substantially below those of United States companies.[233] The only evidence of power piping exports to American companies involved construction projects financed under United States foreign aid programs where the American companies were required to buy American power piping systems.[234] Such exports are an insignificant percentage of the total fabrication sales of the companies making them.[235] And since such sales actually are made in the United States to United States companies,[236] they appropriately may be viewed as domestic sales so far as competitive factors are involved.

Finally, the government's claim that Grinnell will gain a competitive marketing advantage from the merger because the power piping industry is susceptible to reciprocity and reciprocity effect finds no support whatever in the evidentiary record and indeed is insufficient as a matter of law.

Concededly the record contains no industry statistics or other data by which any company's share of the power piping market can be ascertained.[237] There is even less basis in the record in connection with power piping, than there was in connection with the government's reciprocal dealing claim in the sprinkler market,[238] for examining those factors critical to a determination of the complex question of whether the merger will cre-

227. *Supra*, p. 32.

228. In the addendum to its post-trial brief (p. 4), the government states: "Perhaps in no other phase of Grinnell's operations are finances as important as in power piping."

229. *Supra*, pp. 37–38.

230. Carry, DT 23–25; McCully, DT 19; Patterson, DT 72.

231. *Supra*, pp. 38–39.

232. Pease, DT 96–98; Carry, DT 21; McCully, DT 15.

233. Pease, DT 98; Carry, DT 21; McCully, DT 15; Schwab, DT 20–21.

234. Pease, DT 96–97; Carry, DT 21, 50–51; McCully, DT 15–16; Schwab, DT 20; Patterson, DT 23.

235. Pease, DT 96–97; Carry, DT 21, 24; McCully, DT 18; Schwab, DT 20; Patterson, DT 33–34.

236. McCully, DT 18, 41–42; Patterson, DT 34.

237. *Supra*, pp. 26–27.

238. *Supra*, pp. 41–47.

ate a market structure conducive to reciprocal dealing.[239]

Such evidence as there is strongly indicates that the structure of the power piping market is not conducive to reciprocity. Ultimate purchasers of most large power piping systems are public utilities which have legal monopolies in the geographic areas in which they operate.[240] Most contracts actually are let by consulting engineers and general contracting firms.[241] Power piping work almost invariably is awarded on the basis of competitive bids.[242] No power piping witness was able to point to a single instance in recent years where a job had been awarded for reasons of reciprocity.[243] Nor was any power piping witness able to identify any job where bidders had been permitted to revise their original bids once submitted, absent specification changes.[244] While a number of companies in the power piping industry are large and have substantial purchasing power,[245] the witnesses who impressed the Court as being the most experienced in the industry and whose testimony is entitled to great weight made it crystal clear that the power piping market affords no substantial opportunity for reciprocity or reciprocity effect.[246]

The Court holds that the government has not sustained its burden of establishing that in the power piping market the merger may have the effect of substantially lessening competition by giving Grinnell marketing and promotional competitive advantages in the respects claimed, namely, package or system selling, access to ITT's financial resources, foreign expansion or reciprocal dealing—whether viewed separately or cumulatively.

IV

CLAIM REGARDING PIPE HANGERS

[9] The government's position with respect to the alleged anticompetitive effects of the merger in the pipe hanger market is simple and direct, requiring little discussion. The government's claim in short is that, since pipe hangers are necessary components of automatic sprinkler systems and power piping systems, Grinnell, by gaining anticompetitive advantages in the installation of sprinkler systems and in the power piping market, will also gain similar advantages in the sale of pipe hangers.[247]

The Court has held that Grinnell is not the dominant competitor in the pipe hanger industry.[248] And, as with the power piping market,[249] concededly the record contains no market or industry statistics by which any company's share of the pipe hanger market can be de-

239. *Supra*, p. 42.

240. Pease, DT 82; McCully, DT 8; Schwab, DT 7–8.

241. Pease, DT 25, 28–29, 51–52; Prebor, DT 6–7.

242. Pease, DT 51–52; Carry, DT 11–12, 30–32; McCully, DT 9–10, 21–22, 33; Schwab, DT 19; Prebor, DT 6–7, 19.

243. Pease, DT 81; Carry, DT 25.

244. Pease, DT 59–61; Carry, DT 28–29, 70–71; McCully, DT 10, 35.

245. McCully, DT 3–4; Schwab, DT 3; Prebor, DT 68.

246. Carry, DT 25; McCully, DT 21–22.

247. Widmar, Tr. 2178–79.
While the government in its complaint appears to have treated separately the product markets of *pipe hangers* (components of automatic sprinkler systems) and *power pipe hangers* (used in power piping systems), see note 13, *supra*, and the Court treated them as separate product markets in its preliminary injunction opinion, 306 F.Supp. at 771–72 and 771 n. 3, the government's addendum to its post-trial brief treats pipe hangers in the automatic sprinkler and power piping industries as a single product line. *Compare* Widmar, Tr. 2178–79.
In any event, the Court's findings in this section of its opinion apply to all pipe hangers—those used in automatic sprinkler systems, as well as in power piping systems.

248. *Supra*, p. 27.

249. *Supra*, pp. 26–27, 49.

termined accurately.[250] While there is no evidence as to the number or value of pipe hangers used in connection with sprinkler systems or power piping systems, the record does indicate that hangers represent a very small proportion of the value of such systems.[251]

The Court holds that the government has not sustained its burden of establishing that the merger may have the effect of substantially lessening competition in the pipe hanger market.[252]

V

CREDIBILITY OF WITNESSES

While some of the evidence has been stipulated or is undisputed and much of it is documentary, on almost every critical issue in this case—to a substantially greater degree than in most antitrust cases—it has been necessary for the Court to resolve questions of credibility and to determine the appropriate weight to be given to testimony of the trial witnesses called by both sides. This has been done on the basis of specific notations of the undersigned trial judge in his trial notes made contemporaneously with the testimony of each witness.

The testimony of each of the 53 witnesses who testified during the 18 day trial has been carefully evaluated in accordance with the following tests which this Court over a period of more than a decade on the trial bench has found to be helpful and reliable in performing its fact finding responsibility of resolving credibility and of determining weight:

> "The Court, in weighing their testimony, applied such recognized tests as: their demeanor while on the stand; any interest they might have in the outcome of the case; any bias or prejudice for or against either party; their opportunity to observe; any reason to remember or forget; the inherent probability of their testimony; its consistency or lack of consistency; and its corroboration or lack of corroboration with other credible evidence. The testimony of the witnesses, moreover, has been weighed in the light of—and indeed has cast light upon—the exhibits. . . ." Locke Manufacturing Companies v. United States, 237 F.Supp. 80, 89 (D.Conn. 1964).

See also Heyman v. Kline (D.Conn. 1970); McNellis v. Raymond, 287 F. Supp. 232, 241 (N.D.N.Y.1968), aff'd in part, rev'd in part, 420 F.2d 51 (2 Cir. 1970); United States v. Capaldo, 276 F.Supp. 986, 992–93 (D.Conn.1967), aff'd, 402 F.2d 821, (2 Cir. 1968), cert. denied, 394 U.S. 989 (1969); Lomartira v. American Automobile Insurance Company, 245 F.Supp. 124, 131 (D.Conn. 1965), aff'd, 371 F.2d 550 (2 Cir. 1967); Segan Construction Corp. v. Nor-West Builders, Inc., 274 F.Supp. 691, 696 (D. Conn.1967); Rosner v. Modern Maid Packers, Inc., 274 F.Supp. 685, 689 (D.Conn.1967); Westchester Fire Insurance Company v. Tantalo, 273 F.Supp. 7, 15–16 (D.Conn.1967); United States v. Feudale, 271 F.Supp. 115, 119 (D.Conn. 1967); Pickett v. Nelseco Navigation Company, 270 F.Supp. 682, 683 (D.Conn. 1967).

VI

CLAIM OF ECONOMIC CONCENTRATION

At the preliminary injunction hearing in this case the government raised, and

250. *Supra*, p. 27.

251. Groos, DT 12-13.

252. Of course, this result follows wholly aside from the Court's independent consideration of such evidence as has been introduced bearing upon the alleged anticompetitive effects of the merger upon the pipe hanger market. By failing to establish the likelihood of a substantial lessening of competition in the automatic sprinkler and power piping markets, upon the government's own representations it necessarily has failed to sustain its burden with respect to the pipe hanger market.
The converse, however, would not necessarily follow had the Court held that the merger might lessen competition in the automatic sprinkler or power piping mark[illegible]

the Court ruled upon, a claim of economic concentration. 306 F.Supp. at 796–97. At the trial on the merits the government, through its offer of the proposed written testimony of Dr. Willard F. Mueller,[253] again raised the same issue but with a different and somewhat ingenious twist.

The new twist to the government's economic concentration claim is that in the wake of a "trend among large diversified industrial firms to acquire other large corporations", it can be established that "anticompetitive consequences will appear in numerous though *undesignated individual 'lines of commerce'*." [254] (Emphasis added)

The Court's short answer to this claim —and the ground for its ruling sustaining defendant's objection to the Mueller testimony for lack of relevance—is that the legislative history, the statute itself and the controlling decisional law all make it clear beyond a peradventure of a doubt that in a Section 7 case the alleged anticompetitive effects of a merger must be examined in the context of *specific product and geographic markets*; and the determination of such markets is a necessary predicate to a determination of whether there has been a substantial lessening of competition within an area of effective competition. To ask the Court to rule with respect to alleged anticompetitive consequences in *undesignated lines of commerce* is tantamount to asking the Court to engage in judicial legislation. This the Court most emphatically refuses to do. See 306 F.Supp. at 796–97.

Recognition of the trend toward economic concentration in American industry, including extensive conglomerate merger activity in recent years, is not exactly new.[255] The government points out [256] that the trend during the last two decades toward concentration of assets in the hands of fewer and larger corporate entities, together with an increasing diversification of those firms which primarily control the assets, has resulted in certain anticompetitive effects, among which are increased opportunities for business reciprocity and reciprocity effect, citing FTC v. Consolidated Foods Corp., 380 U.S. 592 (1965).[257] Then, re-

253. GX 423 (identification only).
Aside from defendant's various specific objections (Tr. 1406–24) to the form and content of Dr. Mueller's proposed testimony which the Court sustained (Tr. 2173–74), defendant also interposed a general objection (Tr. 1401–05; 2145–70) on the ground that the proferred testimony would be irrelevant to any issue in the case since it did not purport to relate to any "line of commerce", despite the government's claim that "trade carried on by large diversified corporations is, in fact, a line of commerce" (Tr. 1424). The Court sustained defendant's general objection of lack of relevance (Tr. 2173–75).
This section of the Court's opinion is directed to the reasons for the latter ruling.

254. "Plaintiff's Memorandum In Opposition To Motion To Strike Dr. Mueller's Testimony", filed October 28, 1970, p. 8 (hereinafter, "Government's Mueller Memorandum").
Since Dr. Mueller's testimony was never admitted in evidence, no motion to strike was before the Court. The government's memorandum accordingly was construed as a document in support of the government's claim of admissibility of the Mueller testimony (Tr. 2145; 2172).

255. This trend toward concentration is outlined in United States v. Northwest Industries Inc., 301 F.Supp. 1066, 1092–93 (N.D.Ill.1969). See also Hearing on Economic Concentration Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 88th Cong., 2d Sess., pt. 1, at 77–96, 119–29, 204–19 (1964); 89th Cong., 1st Sess., pt. 2, at 508–20 (1965); Davidow, Conglomerate Concentration and Section Seven: The Limitations of the Anti-Merger Act, 68 Colum.L.Rev. 1231, 1232–35 (1968). Not all commentators agree that such a concentration trend in the American economy has in fact occurred. See Turner, Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv.L. Rev. 1313, 1327 (1965). For purposes of this section of the opinion, the Court assumes that there has been a trend toward concentration.

256. Government's Mueller Memorandum, *supra* note 254, at 1–2.

257. Mr. Justice Stewart, in his concurring opinion in *Consolidated Foods*, stated:

"Clearly the opportunity for reciprocity is not alone enough to invalidate a merger under § 7. *The Clayton Act*

ferring to certain of the theories expressed in Professor Mueller's proposed testimony, the government contends that the most important anticompetitive effect of the trend toward conglomeration by merger is "conglomerate interdependence and forebearance", meaning "a system in which competitors respond to each other and to their own needs rather than to the impersonal disciplining forces of the market in general." [258] From this the government concludes that " '[t]rade engaged in by large diversified industrial firms' describes a combination of many 'lines of commerce'." [259]

The legislative history of the 1950 amendments to Section 7 of the Clayton Act, 64 Stat. 1125, reflects a concern on the part of Congress about the rising tide of economic concentration in American industry caused by all types of mergers, including conglomerate mergers. As the Supreme Court observed in its analysis of the legislative history [260] in Brown Shoe Co. v. United States, 370 U.S. 294, 315 (1962):

> ". . . the dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy."

But the legislative history also indicates that Section 7 as amended was not intended to proscribe all mergers which result in economic concentration.[261] The House Report recommending passage of amended Section 7 concluded that:

> "the purpose of the bill [H.R. 2734] is to protect competition *in each line of commerce* in each section of the country." [262] (Emphasis added)

Similarly, the Senate Report stated that:

> "It is intended that acquisitions which substantially lessen competition, as well as those which tend to create a monopoly, will be unlawful *if they have the specified effect in any line of commerce*, whether or not that line of commerce is a large part of the business of any of the corporations involved in the acquisition." [263] (Emphasis added)

Amended Section 7 as enacted is specific in barring a merger only "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition." [264]

Even if the legislative history and the amended statute on its face were not as clear as the Court believes, the decisional law uniformly has emphasized the importance of defining the specific product market or line of commerce in which alleged anticompetitive effects of a merger are to be measured.[265] In Brown Shoe

was not passed to outlaw diversification." 380 U.S. at 603 (Emphasis added).

258. Government's Mueller Memorandum, *supra* note 254, at 2.

259. *Id.* at 10.

260. The House Report on the proposed amended Section 7 stated that "measured by practically any method and compared to practically any standard, the level of economic concentration in the American economy is high." H.R.Rep.No.1191, 81st Cong., 1st Sess., 2 (1949).
The Senate Report stated that "the purpose of the proposed bill, H.R. 2734, is to limit future increases in the level of economic concentration resulting from corporate mergers and acquisitions." S.Rep.No.1775, 81st Cong., 2d Sess., 3 (1950).

261. Note, Conglomerates and Section 7: Is Size Enough?, 70 Colum.L.Rev. 337, 340 (1970).

262. H.R.Rep.No.1191, 81st Cong., 1st Sess., 8 (1949).

263. S.Rep.No.1775, 81st Cong., 2d Sess., 5 (1950).

264. 15 U.S.C. § 18 (1964).

265. See, *e.g.*, the market definitions in United States v. Von's Grocery, 384 U.S. 270, 272–274, 277 (1966); FTC v. Consolidated Foods Corp., 380 U.S. 592, 595 (1965); United States v. Continental Can Co., 378 U.S. 441, 447–58 (1964); United States v. Penn-Olin Co., 378 U.S. 158, 161–165 (1964); Brown Shoe Co. v. United States, 370 U.S. 294, 325–28 (1962).

Co. v. United States, *supra*, at 335, the Supreme Court held that:

> "the proper definition of the market is a 'necessary predicate' to an examination of the competition that may be affected by the [horizontal] aspects of the merger." [266]

Despite the legislative history, the statute itself and the controlling decisional law, the government urges the Court to adopt an "expansive" reading of the statutory language "in any line of commerce" so as to read into the statute an interdiction of all mergers where the effect may be a substantial lessening of competition "anywhere, in the purchase or sale of anything" and thus to receive "proof of a merger or series of mergers which could be demonstrated to have a broad, anticompetitive effect upon 'markets' in general" [267]—in short, to disregard the statutory requirement that alleged anticompetitive effects of a merger be examined with relation to a specific "line of commerce" and instead to conduct a roving expedition to determine whether "anticompetitive consequences will appear in numerous though *undesignated individual 'lines of commerce.'*" [268] (Emphasis added)

In response to the Court's inquiry of government trial counsel as to "whether there is authority, legislative or judicial authority, to support that claimed line of commerce",[269] government counsel replied, "The Government unfortunately cannot point to a particular case where the Court held that this was a line of commerce." [270]

[10] The Court declines the government's invitation to indulge in an expanded reading of the statutory language and holds that the statute means just what it says. It proscribes only those mergers the effect of which "may be substantially to lessen competition"; it commands that the alleged anticompetitive effects be examined in the context of specific product and geographic markets; and it does not proscribe those mergers the effect of which may be substantially to increase economic concentration. 306 F.Supp. at 796.

Whatever may be the merits of the arguments as a matter of social and economic policy in favor of, or opposed to, a standard for measuring the legality of a merger under the antitrust laws by the degree to which it may increase economic concentration rather than by the degree to which it may lessen competition, that is beyond the competence of the Court to adjudicate. As the Court attempted to make clear in its preliminary injunction opinion, 306 F.Supp. at 796–97, if that standard is to be changed, it is fundamental under our system of government that any decision to change the standard be made by the Congress and not by the courts.

266. See also United States v. E. I. du Pont De Nemours & Co., 353 U.S. 586, 593 (1957):

> "[d]etermination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act because the threatened monopoly must be one which will substantially lessen competition 'within the area of effective competition'. Substantiality can be determined only in terms of the market affected."

In *Brown Shoe*, the Supreme Court listed the salient characteristics of a market or line of commerce. 370 U.S. at 325. It should be noted that in the instant case, in response to defendant's interrogatories, the government stated that trade carried on by large diversified companies does not fall within those market characteristics. Tr. 2169; DX G.

267. Government's Mueller Memorandum, *supra* note 254, at 3.

268. Id. at 8.

269. Tr. 2163.

270. Tr. 2165.

CONCLUSIONS

Upon the facts found and for the reasons stated above, the Court concludes as follows:

(1) That the Court has jurisdiction over the subject matter and the parties.

(2) That venue is properly laid in the District of Connecticut.

(3) That the government has not sustained its burden of establishing that Grinnell is the dominant competitor in any of the relevant product and geographic markets, i. e. in any line of commerce in any section of the country.

(4) That the government has not sustained its burden of establishing that ITT's acquisition of Grinnell may have the effect of substantially lessening competition.

(5) That the government is not entitled to a permanent injunction enjoining the said acquisition.

(6) That defendant is entitled to judgment dismissing the complaint on the merits.

(7) That the final judgment to be entered shall incorporate and continue in effect the provisions of the hold separate order entered herein on October 30, 1969, 306 F.Supp. at 799–800, pending receipt by the Clerk of this Court of the mandate of the United States Supreme Court upon any appeal which may be taken from the judgment of this Court pursuant to 15 U.S.C. § 29 (1964).

(8) That the Clerk of this Court is directed to enter final judgment forthwith.

The foregoing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52(a), Fed.R.Civ.P.

UNITED STATES of America

v.

Leroy LINDSEY.

Crim. No. 1881–70.

United States District Court,
District of Columbia.
Jan. 25, 1971.

Prosecution for violation of narcotics laws. The District Court, Gasch, J., held that evidence established that defendant, who was found in possession of heroin, was not an addict who was incapable of forming requisite mens rea to be responsible criminally for simple nontrafficking possession of narcotic drug for his own use.

Order in accordance with opinion.

1. Criminal Law ⇐46

Narcotics user who lacks ability to abstain from taking or using narcotics and is unable to resist the compulsive urge to take narcotics is an "addict" who lacks the requisite mens rea to be responsible criminally for simple nontrafficking possession of narcotic drug for his own use. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C.A. § 174; 26 U.S.C.A. (I.R.C.1954) § 4704 (a).

See publication Words and Phrases for other judicial constructions and definitions.

2. Poisons ⇐9

Evidence established that defendant, who was found in possession of heroin, was not an addict who was incapable of forming requisite mens rea to be responsible criminally for simple nontrafficking possession of narcotic drug for his own use. Narcotic Drugs Import and Export Act, § 2(c, f), 21 U.S.C.A. § 174; 26 U.S.C.A. (I.R.C.1954) § 4704(a).

3. Poisons ⇐2

Habitual user of narcotics could be committed for treatment under Narcotic Addict Rehabilitation Act regardless of

8. On March 3, 1971 at ITT's request Geneen and William Merriam, ITT Vice President and Director of Washington Relations, met with Ehrlichman to discuss antitrust matters.

		Page
8.1	John Ehrlichman log, March 3, 1971 (received from SSC).....	256
8.2	Letter from William Merriam to John Ehrlichman, March 4, 1971 (received from White House).....	257
8.3	William Merriam testimony, 3 KCH 951.....	258

DR

MONDAY, MARCH 1, 1971

To Des Moines, Iowa with the President

TUESDAY, MARCH 2, 1971

8:00	HRH office
8:30	President
12:30	John Knox
1:45	Car at west basement
2:00	Meeting at HUD with Mayors - 10th floor Conference Room
4:00	President, Shultz
4:15	President, Shultz, Peter Peterson, HAK

WEDNESDAY, MARCH 3, 1971

8:00	HRH office
8:30	President
10:00	Harold Geneen, William Merriam
11:00	Marty Schram (Newsday)
12:00	Col. Richard Chidelaw
12:30	Lunch in Mess - Whitaker, William Ruckelshaus
2:00	Theatre - President's Commission on Personnel Interchange
3:15	Richard Wood
4:00	Lord Cromer
8:00	Radio and TV Correspondents' Dinner - Shoreham

THURSDAY, MARCH 4, 1971

8:00	HRH office
9:30	Gen. Hughes, Cashen, Cole
10:30	Property Review Board - Roosevelt Room
1:00	248 EOB - Revenue Sharing - Shultz, Weber, Nathan, Harper, Cole
2:00	Victor Lasky
3:15	Morgan, Cole
4:00	Jerry Schecter (Time)
5:00	Frank Cormier (AP)
6:15	Dinner with Mrs. E, Tom, Jan - Mess
7:30	John and Abigail - Ford's theatre

DR

8.2 WILLIAM MERRIAM LETTER, MARCH 4, 1971

EHRLICHMAN, JOHN D. / 77 25 (3)

MAR 5 1971

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION
1707 L STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM P. MERRIAM
VICE PRESIDENT
DIRECTOR WASHINGTON RELATIONS

March 4, 1971

The Honorable
John D. Ehrlichman
Assistant to the President
The White House
Washington, D. C. 20500

Dear John: 003814

On behalf of Hal Geneen and myself, I want to tell you that we appreciate very much your seeing us Wednesday morning on such short notice. We both came away from the meeting with the thought that you understand our position perfectly and are sympathetic.

We were delighted to learn about the study being undertaken by Mr. Peterson and his staff and look forward to reviewing it when it is completed. Later in the month we will get in touch with Bud Krough unless you have some objection.

Incidentally, after leaving your office Hal was upset with himself for having called you "Chuck" on several occasions during the meeting with you. We had previously discussed our contacts with Chuck Colson and apparently that stuck in his mind. I hope I rightly assured him that you would understand.

Kindest regards,

Bill

/cmb

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MAR 5 1971
CENTRAL FILES

Mr. MERRIAM. Well, I do not know. He had one or two that I know of. We had other people in the office who knew Mr. Colson as well as Mr. Cashen.

Senator KENNEDY. Do you know whether Mr. Geneen saw Mr. Colson on other occasions rather than the one or two?

Mr. MERRIAM. I really went with him only on one and that was not on antitrust. It was on another subject.

Senator KENNEDY. How about Mr. Ehrlichman?

Mr. MERRIAM. I went once with him. That was in general, I went twice with Mr. Ehrlichman, excuse me, once on Chile and once on antitrust.

Senator KENNEDY. Once on antitrust?

Mr. MERRIAM. Bigness per se, the same theme.

Senator KENNEDY. When was that, do you know?

Mr. MERRIAM. I would have to look it up, Senator, I have no idea. I think it was in the spring of 1971, we can look it up and supply it.

Senator KENNEDY. I think the ITT release indicates that was early 1971.

Mr. MERRIAM. That is what I thought, yes.

Senator KENNEDY. Do you remember what took place at that conversation?

Mr. MERRIAM. Mr. Geneen was very unhappy with the antitrust policy of the U.S. Government and Mr. McLaren's antiturst policy and he was making a pitch for somebody to do something.

Senator KENNEDY. What has Mr. Ehrlichman go to do with it?

Mr. MERRIAM. Well, he was in the White House and nobody knew what he could do.

Senator KENNEDY. What did you think he could do?

Mr. MERRIAM. I had no idea.

Senator KENNEDY. Who do you think, who advised him to see Mr. Ehrlichman, did you?

Mr. MERRIAM. I did.

Senator KENNEDY. Why did you think——

Mr. MERRIAM. I think he was the top domestic man in the White House.

Senator KENNEDY. And what about Colson, Charles Colson?

Mr. MERRIAM. Well, he was just someone we knew in the White House. I met him at one time. I went to see Mr. Dent on some minor matter without Mr. Geneen and Mr. Dent's office took me over and introduced me to Mr. Colson and I met him and I do not know even what Mr. Colson does today.

Senator KENNEDY. Now, did you talk on antitrust policy with Mr. Colson as well?

Mr. MERRIAM. I did not; no.

Senator KENNEDY. Did Mr. Geneen?

Mr. MERRIAM. He might have, I cannot remember.

Senator KENNEDY. Did you set up the appointment with Mr. Connally, Secretary Connally?

Mr. MERRIAM. Either I or someone in our office did. They are not difficult to set, you know.

Senator KENNEDY. They are not what?

Mr. MERRIAM. They are not difficult to set. You call the secretary as a rule and get an appointment.

Senator KENNEDY. Who can?

9. On March 20, 1971, on the motion of Solicitor General Erwin Griswold, the time for the government to perfect its appeal in ITT-Grinnell by filing its jurisdictional statement was extended from March 31, 1971 to April 20, 1971.

Page

9.1 United States v. International Telephone and Telegraph Corporation, Application for Extension of Time and Order of the Supreme Court, March 20, 1971, and letter from the Deputy Clerk of the Supreme Court to Solicitor General Erwin Griswold (received from Department of Justice)..... 260

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

UNITED STATES OF AMERICA, APPELLANT,
v.
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

APPLICATION FOR AN EXTENSION OF TIME FOR
DOCKETING CASE ON APPEAL

The Solicitor General, on behalf of the United States, applies for an extension of 20 days, to and including April 20, 1971, within which to docket the government's direct appeal from the judgment of the District Court for the District of Connecticut.

The judgment of the district court was entered on December 31, 1970; the government filed a notice of appeal on March 1, 1971; and the time for docketing the appeal, unless extended, expires on March 31, 1971. The jurisdiction of this Court would be invoked under the Expediting Act, 15 U.S.C. 29.

This is a civil antitrust suit by the United States which challenged, as a violation of Section 7 of the Clayton Act, the acquisition of the Grinnell Corporation by the International Telephone and Telegraph Corporation ("ITT"). ITT is the ninth largest industrial corporation in the United States and is engaged in a wide range of diversified businesses. Between 1961 and 1970 it acquired approximately 100 domestic corporations. Grinnell, the 268th largest domestic industrial corporation, manufactures

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automatic fire sprinkler devices and installs automatic fire sprinkler systems. The government contended that Grinnell is a dominant firm in sprinkler device manufacture and sprinkler system installation, that these lines of commerce are concentrated, and that the acquisition would

further entrench Grinnell's position because of various advantages it would gain as a result of ITT's vast resources and interests.

After a lengthy trial, the district court ruled that Grinnell was not a dominant firm and that its competitive position would not be entrenched or unduly advantaged as a result of the acquisition. A copy of its opinion is attached.

The Solicitor General has not finally decided whether to proceed with the appeal. The additional time is needed for him to study the case further and, if he decides to proceed, to prepare and print the jurisdictional statement.

Respectfully submitted.

/s/ Erwin N. Griswold

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

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House Judiciary Committee staff

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

UNITED STATES OF AMERICA, APPELLANT,

v.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

[illegible]

The Solicitor General, on behalf of the United States, applies for an extension of 30 days, to and including April 20, 1971, within which to docket the Government's direct appeal from the judgment of the District Court for the District of Connecticut.

The judgment of the district court was entered on December 31, 1970; the government filed a notice of appeal on March 1, 1971; and the time for docketing the appeal, unless extended, expires on March 31, 1971. The jurisdiction of this Court would be invoked under the Expediting Act, 15 U.S.C. 29.

This is a civil antitrust suit by the United States which challenged, as a violation of Section 7 of the Clayton Act, the acquisition of the Grinnell Corporation by the International Telephone and Telegraph Corporation ("ITT"). ITT is the ninth largest industrial corporation in the United States and is engaged in a wide range of diversified businesses. Between 1961 and 1970 it acquired approximately 100 domestic corporations. Grinnell, the 266th largest domestic industrial corporation, manufactures automatic fire sprinkler devices and installs automatic fire sprinkler systems. The government contended that Grinnell is a dominant firm in sprinkler device manufacture and sprinkler system installation, that these lines of commerce are concentrated, and that the acquisition would

further entrench Grinnell's position because of various advantages it would gain as a result of ITT's vast resources and interests.

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The Solicitor General has not finally decided whether to proceed with the appeal. The additional time is needed for him to study the case further and, if he decides to proceed, to prepare and print the jurisdictional statement.

Respectfully submitted.

MARCH 1971.

Supreme Court of the United States

No. ----------, October Term, 19 70

UNITED STATES,

Appellant,

v.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

O R D E R

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled case be, and the same is hereby, extended to and including April 20th, 1971.

S/ JOHN M. HARLAN
Associate Justice of the Supreme Court of the United States

Dated this 20th
day of March, 1971.

9.1 DEPUTY CLERK OF SUPREME COURT LETTER, MARCH 24, 1971

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
CLERK OF THE COURT

March 24, 1971

The Honorable Erwin N. Griswold
Solicitor General of the United States
Department of Justice
Washington, D. C. 20530

RE: UNITED STATES v. INTERNATIONAL
TELEPHONE AND TELEGRAPH CORPORATION
October Term, 1970

My dear Mr. Griswold:

Your application for an extension of time to docket an appeal in the above-entitled cause was presented to Mr. Justice Harlan, who on March 20 signed an order extending your time to and including April 20, 1971.

A copy of the Justice's order is enclosed.

Very truly yours,

E. ROBERT SEAVER, Clerk

By Michael Rodak, Jr.
Michael Rodak, Jr.
Deputy Clerk

jmh
Enclosure

cc: Henry P. Sailer, Esq.
Gilbert C. Earl, Esq.

60-149-037-1

10. On March 30, 1971 Merriam and Thomas Casey, ITT Director of Corporate Planning, met with Peter Peterson, Assistant to the President for International Economic Affairs, to discuss a wide range of subjects including antitrust matters.

Page

10.1 Peter Peterson affidavit, April 29, 1974..... 268

10.2 Letter from William Merriam to Peter Peterson, April 7, 1971 (received from Peter Peterson)..... 271

AFFIDAVIT

UNITED STATES OF AMERICA)
) ss:
DISTRICT OF COLUMBIA)

PETER G. PETERSON, being duly sworn, deposes and says:

1. I am the Chairman of the Board of Lehman Brothers, One William Street, New York, New York. I make this affidavit knowing that it may be relied upon by the Judiciary Committee of the House of Representatives in connection with proceedings before it.

2. Beginning on February 15, 1971 and at all times hereinafter mentioned, I was Assistant to the President for International Economic Affairs.

3. At the instance of John D. Ehrlichman, I met on March 30, 1971 with William R. Merriam and Thomas H. Casey, both officials of the International Telephone and Telegraph Company (ITT). We discussed a wide range of subjects, including the Office of Foreign Direct Investment, company earnings abroad and general antitrust matters.

4. At some time after April 8, 1971, Mr. Ehrlichman told me that the President wanted me to meet with Mr. Harold S. Geneen, President of ITT. I believe Mr. Ehrlichman said antitrust matters were one of the things he wanted to talk about. Pursuant to those instructions, I met with Messrs. Geneen and William R. Merriam on April 16, 1971 at about

2:30 p.m. For most of our 30 or 40 minute meeting, we discussed a wide variety of general subjects dealing with the declining international economic position of the U.S., technology, productivity, capital controls abroad and overall antitrust policy relating to "bigness." At the end of the meeting, Messrs. Geneen and Merriam briefly discussed ITT's specific antitrust problems, including the fact that the deadline for the ITT-Grinnell appeal was approaching.

5. After the meeting I telephoned Mr. Ehrlichman to report on the meeting and mentioned their reference to the ITT-Grinnell appeal. To the best of my recollection, he told me that the situation was well in hand, or under control, and, in any event, he indicated that action was under way to postpone the appeal.

6. Later that afternoon, there was delivered to me a copy of a letter and memorandum from Lawrence E. Walsh, an attorney for ITT, directed to Richard G. Kleindienst, Deputy Attorney General, explaining ITT's position that a delay in the ITT-Grinnell appeal would be advisable. (At the meeting with Messrs. Geneen and Merriam, Merriam had asked if I would be willing to see the material prepared by Walsh, and I said that I would be glad to do so.) On April 21, 1971, I sent this material to Arthur F. Burns, Chairman of the Board of Governors of the Federal Reserve System, who was then studying antitrust matters on behalf of the President.

7. On April 23, 1971, I prepared a memorandum for the President, describing among other things my meeting with Messrs. Geneen and Merriam.

8. After leaving the White House, I saw a published copy of a letter dated April 22, 1971 from Mr. Merriam to John B. Connally, then Secretary of the Treasury, which begins:

> "Pete Peterson and I thought you would be interested in the results of the calls Harold S. Geneen and I made on Friday, April 16, when we discussed antitrust matters and their impact on the economy of the country."

The letter discussed the delay in the ITT-Grinnell appeal and other developments related to the antitrust suits against ITT. To the best of my recollection, I never initiated any suggestion to Mr. Merriam or anyone else that Mr. Connally would be directly involved in such matters.

Peter G. Peterson

PETER G. PETERSON

Sworn to before me this
29th day of April, 1974.

Patricia A. McGowan

Notary Public

My commission expires: 2/14/75.

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House Judiciary Committee staff

April 7, 1971

The Honorable
Peter G. Peterson
Old Executive Office Bldg., Room 134
Washington, D.C. 20500

Dear Pete:

According to our recent discussion and your request for industry information on the problems of international corporations in the antitrust and other areas, we are listing the major recommendations as seen by us.

A) We believe that new statutory authority be granted to an appropriate government agency to grant exemptions from antitrust laws and suits where proof could be made that a venture is in the national interest and necessary in order to compete in international commerce.

B) We recommend that the Department of Justice administratively consider the extent to which an American firm is compelled by foreign laws or business practices, as a condition of doing business at all, to resort to certain business practices so long as there is no restraint on American export or import potential.

C) In today's international economic environment most foreign countries are actively encouraging horizontal mergers to increase efficiencies and increase economies of scale in order to improve their costs and competitiveness in world markets. The U.S. antitrust philosophy acts exactly opposite in that it precludes on a "potential and/or theoretical" basis any merger which may result in some sort of "decisive competitive advantage" over other competitors.

You asked us for areas of disadvantages faced by U.S. companies doing business in foreign lands. We feel that:

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House Judiciary Committee staff

A) The OFDI Regulations with their restrictions on capital transfers and earnings repatriation requirements clearly impose burdens on U.S. companies not encountered by foreign companies. Not only have the Regulations resulted in overburdening the balance sheets of American companies with foreign-raised debt, but they have also confronted U.S. companies with increased nationalistic feelings because of the earnings repatriation requirements. These feelings have been further aggravated by the necessity to compete in foreign capital markets for often scarce funds.

B) The slowness, complexity and rigidity with which the various U.S. Export Control Acts have been applied frequently put U.S. companies at a disadvantage vis-a-vis foreign companies particularly as regards exports to Eastern Bloc countries.

C) An additional disadvantage encountered in many foreign countries, not encountered by foreign companies in the same countries, is the exercise by the foreign country of controls over U.S. investments. These controls which are frequently exercised in such a way as to favor local companies or companies within local trading blocs, such as the EEC, are also utilized to prevent the entry of American companies into sectors characterized as of "national interest". In Latin America such controls are now being used to deny foreign firms access to local financial sources. Coupled with OFDI restrictions, this will place U.S. firms at a substantial disadvantage.

D) A corollary of investment controls sometimes encountered is the application of preferential treatment to local companies or trade bloc suppliers in connection with public contracts.

E) U.S. companies also are faced in the export area with severe competition from foreign companies whose governments provide the foreign company with extremely competitive governmental financing or government-backed private financing. This preferential aid frequently takes the form of special export financing, tax rebates in connection with exports, and more often than is generally supposed, inter-governmental low interest loans. Indeed it is not unusual to encounter, in bidding on export projects, foreign competitors whose governments are offering forty-year, low interest financing.

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House Judiciary Committee staff

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House Judiciary Committee staff

F) Finally, it is not unusual to find that the commercial sections of U.S. embassies abroad do not give the same support to U.S. companies as the embassies of many foreign countries. A more sophisticated approach to commercial assistance via commercial intelligence and other affirmative support to U.S. companies by U.S. embassies and commercial attaches abroad is an area where there is room for considerable improvement.

In addition to the above, we would like to make two suggestions which we feel the U.S. could institute with other countries or consider doing itself.

Agreements could be made granting generalized preferences for manufactured and semi-manufactured goods from less developed countries. The recent EEC moves in this area should be followed up by our own government.

Also, further consideration could be given to means by which U.S. foreign aid programs and other export financing resources could be made available to U.S. companies in a far more flexible and effective fashion so as to put them on a competitive standing with their foreign competitors.

We thank you for this opportunity to submit our thoughts on this most complex subject. We also wish you well with your most important assignment.

Sincerely,

William R. Merriam
Vice President

Indistinct document retyped by
House Judiciary Committee staff

April 7, 1971

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Peter G. Peterson
Old Executive Office Bldg., Room 134
Washington, D. C. 20500

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Also, further consideration could be given to means by which U.S. foreign aid programs and other export financing resources could be made available to U.S. companies in a far more flexible and effective fashion so as to put them on a competitive standing with their foreign competitors.

We thank you for this opportunity to submit our thoughts on this most complex subject. We also wish you well with your most important assignment.

Sincerely,

William R. Merriam
Vice President

11. At the request of Ehrlichman who said he spoke for the President, Peterson met with Geneen and Merriam on Friday, April 16, 1971. They discussed various subjects relating to economic policy, including overall antitrust policy related to bigness. At the end of the meeting, Geneen and Merriam discussed ITT's specific antitrust problems, including the fact that the deadline for the government to perfect the ITT-Grinnell appeal was the following Tuesday, April 20. After the meeting Peterson telephoned Ehrlichman and reported on the meeting including the discussion of the ITT-Grinnell appeal. Ehrlichman indicated to Peterson that action was under way to postpone the appeal. The following week Peterson reported to the President on the meeting and his subsequent telephone call to Ehrlichman.

Page

11.1 Peter Peterson affidavit, April 29, 1974 278

11.2 Memorandum from Peter Peterson to the President, April 23, 1971 (received from White House)..... 281

AFFIDAVIT

UNITED STATES OF AMERICA)
) ss:
DISTRICT OF COLUMBIA)

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1. I am the Chairman of the Board of Lehman Brothers, One William Street, New York, New York. I make this affidavit knowing that it may be relied upon by the Judiciary Committee of the House of Representatives in connection with proceedings before it.

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7. On April 23, 1971, I prepared a memorandum for the President, describing among other things my meeting with Messrs. Geneen and Merriam.

8. After leaving the White House, I saw a published copy of a letter dated April 22, 1971 from Mr. Merriam to John B. Connally, then Secretary of the Treasury, which begins:

> "Pete Peterson and I thought you would be interested in the results of the calls Harold S. Geneen and I made on Friday, April 16, when we discussed antitrust matters and their impact on the economy of the country."

The letter discussed the delay in the ITT-Grinnell appeal and other developments related to the antitrust suits against ITT. To the best of my recollection, I never initiated any suggestion to Mr. Merriam or anyone else that Mr. Connally would be directly involved in such matters.

Peter G. Peterson

PETER G. PETERSON

Sworn to before me this
29th day of April, 1974.

Patricia M. McManus

Notary Public

My commission expires: 2/1/75.

BE 2-2
PR 11

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

INFORMATION

April 23, 1971

MEMORANDUM FOR: THE PRESIDENT

FROM: PETER G. PETERSON

THE PRESIDENT HAS SEEN...

1. Anti-trust

You asked me to meet with Hal Geneen of IT&T on anti-trust. In the course of that discussion, he informed me that Justice was about to make an appeal to the Supreme Court that had very wide-ranging policy implications.

I immediately called John Ehrlichman and I understand action had been taken to at least postpone this action.

Per your suggestion, I have also shown the Council presentation to Arthur Burns and his key people, and talked about implications of U.S. anti-trust considerations on the U.S. competitive position in the world. Arthur seems very much involved in preparing such a paper for you.

003931

2. Council Presentation

You have asked that I make this presentation to key White House staff (April 28), Business Council (May 8), and on a broad and bipartisan basis to the Congressional leadership.

At the Republican leadership session, you asked about the Congressional presentation. I have felt we should hold this off until the White House staff has reviewed the presentation. I think it is likely that we would not want to show a Congressional audience too much material where we did not have specific points of view or programs. Clark MacGregor and I will prepare a specific recommendation on how to handle a Congressional presentation.

You have also asked that certain information on Russia be added to the presentation and I've taken the liberty of adding China in view of obvious interest.

As you have requested, you shall have your own copy of the presentation as soon as color copies of the charts are completed . . . in about a week.

3. Movies

I have met with Jack Valenti and Taft Shrieber. We have their extensive list of non-tariff barriers. I expect a task force report back by the middle of May and will then recommend a course of action.

12. Also on April 16, 1971 Lawrence Walsh, a member of a law firm that had long represented ITT, telephoned Deputy Attorney General Kleindienst. Pursuant to that telephone conversation Walsh caused to be delivered to Kleindienst a letter and memorandum urging that before the Department of Justice decided to pursue the ITT-Grinnell appeal to the Supreme Court it should undertake a review by all interested federal agencies of the economic consequences of a Supreme Court decision favorable to the government. Copies of the Walsh letter and memorandum were delivered later that day to Peterson and Ehrlichman.

Page

12.1 Richard Kleindienst testimony, 2 KCH 250..... 284

12.2 Lawrence Walsh testimony, 3 KCH 1038-39..... 285

12.3 Letter from Lawrence Walsh to Richard Kleindienst, April 16, 1971 with attached memorandum of law (received from White House; reprinted at 2 KCH 265-68... 287

12.4 Memorandum from William Merriam to Peter Peterson, April 16, 1971 with attached letter (received from Peter Peterson)..... 304

12.5 Letter from William Merriam to John Ehrlichman, April 16, 1971 with attached letter and memorandum of law (received from White House)..... 305

firm in New York, together with a memorandum of law. Both of us at that time remembered that that had a significant part to do with that decision. We were going to confer about it during the recess and then bring it before the attention of the committee that afternoon and then the chairman recessed the hearings until today.

Judge McLaren and I are kind of glad that that occurred, because yesterday we had an opportunity to confer with the Solicitor General and ourselves and we have had an opportunity to refresh our recollection on the circumstances that gave rise to that extension.

At or about April 16, and I think it was on April 16, although it could have been the day before, on April 15—and I have talked to Judge Walsh in New York to likewise refresh my recollection—he called me to ask whether or not he could submit to me a letter and a memorandum of law by which, on behalf of ITT, they would request an extension of time or a delay before we filed our jurisdictional statement. I told him that Judge McLaren was handling the matter.

He said, well, I will send it down to you and address it to you.

He sent it down by a young man in his office and it got to my office around 3 or 4 o'clock in the afternoon on Friday, April 16, by hand delivery.

When the young man came into my office, I placed a call in for Mr. McLaren. He was not there, and Mr. Comegys came up to my office.

I handed the letter dated April 16 and the memorandum of law to me from Judge Walsh and Mr. Comegys took it with him.

I believe that Monday was April 19. Mr. McLaren had—what he did with it, I don't know, and he is prepared to talk about that. But in any event, he called me and said he wanted to talk to me about the Davis, Polk or the Walsh request. He came into my office as we now piece the thing back together again and stated that he did not agree with the position taken by Judge Walsh in the memorandum of law and the letter.

I told him that I didn't have an opinion on it one way or another, but we discussed the fact that inasmuch as the Supreme Court could not hear this case during that term of the court, until there was an opportunity to consider the matter raised by Judge Walsh in his memorandum of law and the matters contained in his letters, there would be no harm in asking for an extension of time.

When we concluded that conversation, we then called the Solicitor, who came down to my office, and we both asked him to go to the Court and seek the extension of time. He was handed or had made available to him the memorandum of law and the letter from Judge Walsh.

I believe that the Solicitor General has prepared a statement that he submitted to the committee, and that statement followed also a conference with Judge McLaren and myself by which the three of us refreshed our recollection.

So, I wanted to start the hearing out this morning with that in the record, because our recollections were not precise when we concluded our testimony on Friday.

In that connection, if the chairman please, Judge McLaren likewise has a statement to make touching upon this.

The CHAIRMAN. He may proceed.

Judge MCLAREN. Thank you, Mr. Chairman.

Senator KENNEDY. Have you personally been involved in any of these?

Mr. WALSH. No; I don't do antitrust advisory work. I only do litigation or when they come to us as a lawsuit.

Senator KENNEDY. Do you do any antitrust work?

Mr. WALSH. I do antitrust litigation as distinguished from antitrust advisory work.

Senator KENNEDY. I see.

Can you help us understand why, if there was a jurisdictional question that you were interested in, you wouldn't have approached the Solicitor General directly or, if it was strictly an antitrust question, why you wouldn't have approached Mr. McLaren rather than Mr. Kleindienst?

Mr. WALSH. Well, if the *Grinnell* case had not reached the level in the Department which it had, I might well have started with Mr. McLaren; but it seemed to me that with the *Grinnell* case already in the Solicitor General's Office and approved for appeal, that the appropriate person to communicate with was the Acting Attorney General. It was my hope that I could persuade him that ultimately the matter should be considered by Mr. Mitchell, notwithstanding his preference to disqualify himself in ITT cases because of his firm's relationship with an ITT affiliate.

Senator KENNEDY. Could you review for us as best you can, Mr. Walsh, the conversations that you had with Mr. Kleindienst?

Mr. WALSH. Yes.

Senator KENNEDY. Their dates, their frequency, around the middle of April?

Mr. WALSH. Sure. On that matter?

Senator KENNEDY. Pardon?

Mr. WALSH. On this ITT matter?

Senator KENNEDY. I would be interested first on the ITT matter and then if you could tell us whether there were other matters.

Mr. WALSH. No. I think I can simplify that. I don't recall talking with Mr. Kleindienst about any other matter except judiciary matters, incidental bar association things which were of no significance to the Department. But on the ITT matters I checked my telephone records. I had four conversations, all of them extremely brief, beginning on April 16. I believe that the first conversation did not relate to ITT. I believe that related to a judiciary matter.

At about noon on the 16th of April, I called him and told him that I would like to send this memorandum down to him and ultimately would like to make a presentation to him, or hopefully to the Attorney General, on the question of whether the Department should seek an interpretation of the antitrust laws which would effectively bar all large diversification mergers. I told him that we had a memorandum prepared for him and that I would like to send it down. I told him that I would send it down by Mr. Guy Struve, an associate of mine. and told him a little bit about Mr. Struve's background.

My recollection is that he said that this—that he thought Mr. McLaren was in charge of that matter and I pointed out to him over the phone that the *Grinnell* case had gotten into the Solicitor General's office and that I had understood that he had been consulted.

I don't have—I really have no perfect recollection of this now but my impression is that the contents of my letter are probably pretty much what I told him over the phone.

He said that —you know—he indicated that probably it should be for Mr. McLaren and that he also indicated that he was quite sure that Mr. Mitchell would not want to be concerned with this matter, but to send it down and in a sense he would figure out what to do with it when he got it.

So Mr. Struve did take it down to him, delivered it by 3 o'clock on April 16. He went in to Mr. Kleindienst's office with it and Mr. Kleindienst sent for Mr. Comegys, who was the first assistant in the Antitrust Division, and turned it over to him. I believe Mr. McLaren was probably out of town but I am not sure.

Mr. Struve—I told Mr. Kleindienst that Mr. Struve was authorized to answer any questions that either he had or anybody in the Antitrust Division might have with respect to the memorandum, but neither of them chose to ask him any; and I think Mr. Comegys indicated he didn't think it was necessary and Mr. Struve came back.

The next I heard was Mr. Kleindienst called me early in the morning on April 19. I was not in the office. On April 19 and 20——

Senator KENNEDY. Could I just interrupt you?

Mr. WALSH. Yes.

Senator KENNEDY. Before you leave the 16th——

Mr. WALSH. Yes, sir.

Senator KENNEDY. How many conversations did you have with Mr. Kleindienst on the 16th?

Mr. WALSH. I had two, but I believe only one related to ITT. I have a feeling the first one related to probably a judiciary matter.

The first conversation was 4 minutes long; the second one was 2 minutes or less, and I believe that it would have been at the end of that 4 minute conversation I told him that I might call him on this but I have no recollection of that. I believe it was a 2 minute conversation that concerns ITT.

On the following Monday, the 19th and the 20th, I stayed away from the office to get ready for an argument on an altogether different case which I had to make on April 21, so I stayed home and I called in around 10:30 in the morning and found that Mr. Kleindienst had called me earlier that morning and I called him back at that time and apparently got him in the middle of a meeting, and the essence of what he said was that they had—he had considered the memorandum and had had a meeting with respect to it but he did not tell me who; he told me he thought the answer was going to be no, but he couldn't talk to me but he would call me later. I told my secretary when he called to let me know the next time.

So he called in again about 4:30 that afternoon and at that time said that he had talked with the Solicitor General and the Solicitor General had arranged with Covington and Burling for a 30 day extension of the filing of the jurisdictional statement in the *Grinnell* case. Again, he didn't have time to discuss the matter at length then, that he would again talk with me about it when he had a chance.

I told Mr. Aibel on each occasion what Mr. Kleindienst had told me. I knew by that time—Mr. Aibel and I both knew at that time that

Judge McLAREN. Yes, sir. He came in and he met with me and the staff. I specifically remember one occasion where he had a long meeting in my conference room and went over all the pros and cons and so on.

Senator MATHIAS. Well, now, since you were personally acquainted with him, why did you have any question about simply picking up the phone and calling him wherever he was and hiring him to do the job on the ITT case?

Judge McLAREN. Well, I think that I simply thought at the time that Peter Flanigan had gotten him for me before and I asked Peter to get him for me again. He knew, I would hope, where he was. There wasn't any particular reason I didn't do it directly.

Senator MATHIAS. That is all.

The CHAIRMAN (presiding). I want to place in the record the letter to Mr. Kleindienst from Judge Lawrence E. Walsh, a copy of which I received last night.

Mr. KLEINDIENST. Mr. Chairman, here is the original if you want to put that in the record, together with the memorandum that accompanied it.

(The letter and memorandum follow:)

DAVIS POLK & WARDWELL,
New York, N.Y., April 16, 1971.

Hon. RICHARD G. KLEINDIENST,
Deputy Attorney General,
U.S. Department of Justice,
Washington, D.C.

DEAR DICK: As I told you over the telephone, our firm has represented ITT, as outside counsel, ever since its incorporation over fifty years ago. A few weeks ago, Mr. Harold S. Geneen, Chairman and President of ITT, asked me to prepare a presentation to you as Acting Attorney General and, through you, to the National Administration on the question of whether diversification mergers should be barred and, more specifically, urging that the Department of Justice not advocate any position before the Supreme Court which would be tantamount to barring such mergers without a full study of the economic consequences of such a step.

To us this is not a question of the conduct of litigation in the narrow sense. Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department. We therefore believe that the Department should not take such a step without all of the usual precautions that precede a recommendation for new legislation. If the antitrust laws were to be expanded by legislation, rather than by litigation, the Department's views would, in the first instance, be collected by the Deputy Attorney General and then cleared with the Bureau of the Budget which would give all of the other interested federal departments an opportunity to comment. We believe that any major expansion of the antitrust laws should be accompanied by these steps whether the expansion is by litigation or by legislation. It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisors all have some views with respect to the question under consideration.

Ordinarily I would have first seen Dick McLaren, but I understand that you, as Acting Attorney General, have already been consulted with respect to the ITT problem and that the Solicitor General also has under consideration the perfection of an appeal from the District Court decision in the *ITT-Grinnell* case.

It is our hope that after reading the enclosed memorandum, which is merely a preliminary presentation, you and Dick McLaren and the Solicitor General would be willing to delay the submission of the jurisdictional statement in the Grinnell case long enough to permit us to make a more adequate presentation on this

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question. ITT of course will join in any application for an extension of time. It is obvious that this case cannot be heard at this term of court and it would therefore seem that a delay of a relatively short period would not be harmful to the public interest.

With kindest regards,

Sincerely yours,

ED
Lawrence E. Walsh.

APRIL 16, 1971.

MEMORANDUM FOR THE DEPARTMENT OF JUSTICE IN SUPPORT OF A COMPREHENSIVE REVIEW OF ADMINISTRATION POLICY TOWARD DIVERSIFICATION BY MERGER

This memorandum is submitted to demonstrate that the Department of Justice should initiate a comprehensive, Government-wide review of the national interest implications of diversification by merger before making any argument to the United States Supreme Court which, if accepted by the Court, would have the effect of banning all significant mergers and diversification. We submit that such a sweeping ban should not be adopted as the policy of the Administration and the Nation without the most careful review. Such a review would be undertaken as a matter of course before the Administration proposed legislation to Congress which would have the same effect. We submit that such a review would show that a ban on significant diversification mergers would sacrifice vital national goals—economic growth and full employment, American competitiveness in world markets, and the balance of payments—to the unrealized fear of dangers to competition. The review should avail itself of the insights of all interested Government agencies, as well as of economists, businessmen, lawyers, and other experts outside government.[1]

I

A BAN ON SIGNIFICANT MERGERS AND DIVERSIFICATION WOULD INJURE VITAL NATIONAL INTERESTS

The most important economic problem facing the United States today is the challenge to increase its economic efficiency in order to remain competitive in increasingly rigorous world markets. This challenge must be met if the United States economy is to continue its long-term growth at reasonably full employment. The challenge of remaining competitive in world markets is not something which Government policy can meet unaided, and it is not something which can be met by a simple, one-shot effort. Staying competitive will require a sustained national effort, and increasingly it will require that every economic resource the Nation possesses be utilized to the best advantage.

Diversification by merger is the most important guarantee that every economic resource of the Nation will in fact be used to the best advantage. A nondynamic industry must not be protected from constructive new forces. Through diversification, scarce management skills, additional resources of capital and know-how, and, most important, the will and ability to plan for growth, can be brought to bear in new industries. These inputs are essential if an industry is to remain competitive. If an industry has ceased to generate these inputs itself—as many industries, especially concentrated industries, have—they must be introduced from outside. There are only two ways of introducing these essential inputs from outside: wholly new entry through internal development and diversification by merger. As a practical matter, completely new entry into an established industry is feasible only for (a) firms in closely related industries which have great similarities in

[1] The Department's appeal from the decision of the District Court in *ITT-Grinnell* raises a substantial danger that the Supreme Court will issue a decision broadly condemning diversification mergers, in view of the District Court's finding that the anticompetitive effects alleged by the Department were not supported by the facts. This is particularly true of the Department's contention that the mere possibility of reciprocal dealing (purchasing from customers) is enough to condemn a merger under Section 7 of the Clayton Act. This contention, if accepted by the Supreme Court, would bar almost any significant acquisition by a company with many suppliers.

We urge the Department, in order to make possible a review of Administration policy before national policy is irrevocably fixed by the Supreme Court on antitrust grounds alone, not to perfect its appeal in *ITT-Grinnell* by filing the Jurisdictional Statement which is due on April 20, 1971. If, after this review, the present policy of the Department of Justice regarding mergers and diversification were reaffirmed, there would be numerous other opportunities to present it to the Supreme Court, of which the *ITT-Canteen* and *ITT-Hartford* cases are only two. Moreover, if actual anticompetitive effects should ever develop from an ITT acquisition, the acquisition could be attacked when these effects developed, under the *du Pont-GM* decision of the Supreme Court.

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production and marketing techniques, so that the vital business "know-how" is readily available and transferable to the new field, or (b) employees of established firms in the industry who use their know-how to set themselves up in business as competitors of their former employers. For any other types of persons or firms interested in entering a completely new industry, the lack of detailed industry know-how, combined with the high start-up costs of totally new products and marketing channels, is almost always prohibitive.

Thus diversification by merger is often the only effective means of stimulating new competitiveness in established industries. The record shows that diversification mergers have served this purpose. ITT itself is a case in point. ITT stimulates the profit growth of each of its profit centers by helping them develop short-range and long-range plans for growth and by assisting them through a central management staff of over 1,000 industrial and operations specialists. Since 1960, ITT's earnings have grown at a steady compound rate of 11% a year. The improved competitiveness of the companies ITT has acquired is illustrated by the growth and development of subsidiaries like Avis and Sheraton. ITT, in other words, has been able to apply modern management skills in such a way as to increase very substantially the efficiency and competitiveness of the companies it acquired. Many other companies which have diversified substantially by merger, such as Textron, Litton, TRW, Transamerica, Beatrice, and American Home Products, have also been successful in substantially increasing the competitiveness of the companies they acquired.

Increased economic efficiency is not the only benefit realized from mergers.

For example, individual enterprise and ability are utilized and rewarded much more effectively by companies built around modern management techniques than in many long-established companies.

The entrepreneurial enterprise which leads to the founding of new companies is stimulated far more effectively if an active market exists for the equity interests which the entrepreneur has built up in a successful company. The 3,751 acquisitions which occurred in 1970, the great bulk of which were diversification mergers, indicate the importance of this "capital market" for businesses.

Diversification is also essential to permit a company to hedge or insure against the risks inherent in business operations. Without diversification, a decline in business in one industry can have devastating results, as the downturn in the aerospace business has had in Southern California and the State of Washington.

ITT also illustrates the vital importance of such diversification to the Nation's balance of payments. Prior to World War II, ITT was a United States-owned telephone operating and manufacturing company with substantially all of its operations abroad. Most of its properties were expropriated or destroyed during the war. ITT has now rebuilt a substantial position abroad, particularly in Europe and Latin America. It employs over 200,000 persons abroad, and is the third largest corporate contributor to a positive United States balance of payments, remitting over $300 million a year to the United States economy.

However, the fundamental risks involved in significant foreign operations cannot be ignored. For example, ITT's $150 million investment in the Chile Telephone Company (only two-thirds of which is covered by government insurance purchased by ITT) is facing possible nationalization by the new Marxist government of Chile. Experience has shown that any compensation is likely to be small, paid only in local currency, and late. ITT has not yet received any compensation for its Cuban subsidiary, which was expropriated in 1960.

These risks of foreign operation must be balanced by a stable economic base in the United States. All of ITT's major international competitors, such as Siemens of Germany, Ericsson of Sweden, Mitsubishi, Hitachi, and Nippon Electric of Japan, and Northern Electric of Canada, have solid domestic bases in their home countries as well as active governmental support for their extensive export sales. This need for a stable domestic base is the basic reason for ITT's diversification program. If this diversification into the United States economy is prohibited, the ability of ITT and other United States companies to assume the substantial risks of doing business abroad in a competitive world market will be substantially impaired.

These national interest questions, while of course they affect ITT vitally, do not affect ITT alone. On the contrary, a ruling banning all significant mergers and diversification would have broad repercussions throughout the economy.

We recognize that the points we have made about the national interest implications of mergers and diversification are not uncontroversial. We earnestly submit, however, that they should not be dismissed as special pleading. The report of President Nixon's Task Force on Productivity and Competition (the "Stigler

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Report"), after reviewing the issues of conglomerate mergers, flatly concluded: "Vigorous action on the basis of our present knowledge is not defensible." Like views have been expressed by men who have long been identified with vigorous enforcement of the antitrust laws.[2] So far as we are aware, this conclusion is shared by most scholars in the field of antitrust law.

We respectfully suggest that it is timely for the Department and the Administration as a whole to review their policy toward mergers and diversification.

II

THERE SHOULD BE A COMPREHENSIVE REVIEW OF ADMINISTRATION POLICY TOWARD MERGERS AND DIVERSIFICATION

The Stigler Report strongly recommended a comprehensive review of national policy toward mergers and diversification:

"We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon."

The need for such a review is even more pressing today than it was when the Stigler Report recommended it, because of the danger that the *ITT-Grinnell* appeal to the Supreme Court will result in judicial legislation of a blanket condemnation of all significant mergers and diversification. Because the factual assumptions underlying the Department's anti-merger policy were not established in that case, it would seem appropriate to await another case in which the facts show a real probability of substantial adverse effects on competition, rather than move to a more radical position on the law to compensate for a failure of proof.

This comprehensive review of Administration policy should involve the Departments of Commerce, Labor, and the Treasury, speaking for the business economy, the interests of employees, and the balance of payments, and the Council of Economic Advisors, representing the national commitment to economic growth and full employment, as well as the lawyers in the Department of Justice who have specialized in this field. Such a full and balanced review of merger policy can only be carried out within the Executive Branch, because the Supreme Court has made clear that in merger cases it will look to the antitrust laws alone, and will disregard any economic or other public benefits resulting from the merger.

Such a balanced, Government-wide review is needed to insure that the policy which results is truly in the national interest. Such a Government-wide review would be undertaken as a matter of course before the Administration sought a comprehensive statute from Congress which would ban all significant mergers and acquisitions. Such a review is equally necessary before the Department of Justice seeks to obtain such a prohibition through a Supreme Court decision which would have exactly the same immediate impact as a statute and would be even more difficult to modify as experience showed its unwisdom.

CONCLUSION

For the reasons given above, a comprehensive, Government-wide review of Administration policy toward mergers and diversification should be undertaken.

Respectfully submitted.

LAWRENCE E. WALSH,
FREDERICK A. O. SCHWARZ,
GUY M. STRUVE,
(Of counsel),
Attorneys for International Telephone & Telegraph Corp.

Senator KENNEDY. The Petersen letter that alleges that Dr. Liszka was investigated for overcharging in Medicare, that there is a case against——

The CHAIRMAN. That will be admitted in the record.

(The Petersen letter referred to follows:)

[2] For example, Professor Donald F. Turner has stated that a ban on leading firm acquisitions would make no significant contribution to the preservation of competition, but would limit one of the main avenues, and in many cases the only avenue, for improving the economic performance of inefficient companies.

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DAVIS POLK & WARDWELL
1 CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

CABLE ADDRESS:
BYEGOD, NEW YORK

April 16, 1971

The Honorable Richard G. McLaughlin
Deputy Attorney General
U.S. Department of Justice
Washington, D. C. 20530

003863

Dear Dick:

As I told you earlier this week, our firm has represented ITT, as outside counsel, over almost the entire period of over fifty years ago. A few weeks ago, Mr. Harold S. Geneen, Chairman and President of ITT, asked me to prepare a presentation to your Antitrust Attorney General and, through you, to the Federal Administration on the question of whether divestiture decrees should be broadened and, more specifically, whether the Department of Justice should advocate any provision before the Supreme Court which would be tantamount to banning such mergers without a full study of the economic consequences of such a step.

To us this is not a question of the conduct of litigation in the narrow sense. Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the Court has at times adopted a position more extreme than that urged by the Department. We therefore believe that the Department should not take such a step without all of the usual precautions that precede a recommendation for new legislation. If the enforcement laws were to be expanded by legislation, rather than by litigation, the Department's views would, in the first instance, be collected by the Deputy Attorney General and then cleared with

the Bureau of the Budget which would give all of the other interested federal departments an opportunity to comment. We believe that any major expansion of the antitrust laws should be accompanied by some study whether the expansion is by litigation or by legislation. It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have objections with respect to the question under consideration.

Ordinarily I would have first seen Dick Kleindienst, but I understand that you, as Acting Attorney General, have already been consulted with respect to the ITT problem and that the Solicitor General also has under consideration the perfection of an appeal from the District Court decision in the ITT-Grinnell case.

003864

It is our hope that after reading the enclosed memorandum, which is merely a preliminary presentation, you and Dick Kleindienst and the Solicitor General would be willing to delay the submission of the jurisdictional statement in the Grinnell case long enough to permit us to make a more adequate presentation on this question. ITT of course will join in our application for an extension of time. It is obvious that this case cannot be heard at this term of court and it would therefore seem that a delay of a relatively short period would not be harmful to the public interest.

With kindest regards,

Sincerely yours,

Lawrence E. Walsh.

April , 1971

Memorandum to
the Department of Justice
In Support of a
Comprehensive Review of
Administration Policy Toward
Diversification by Merger

003865

This memorandum is submitted to demonstrate that the Department of Justice should initiate a comprehensive, Government-wide review of the national interest implications of diversification by merger before making any argument to the United States Supreme Court which, if accepted by the Court, would have the effect of banning all significant mergers and diversification. We submit that such a sweeping ban should not be adopted as the policy of the Administration and the Nation without the most careful review. Such a review would be undertaken as a matter of course before the Administration proposed legislation to Congress which would have the same effect. We submit that such a review would show that a ban on significant diversification mergers would sacrifice vital national goals - economic growth and full employment, American competitiveness in world markets, and the balance of payments - to the unrealized fear of dangers to competition. The

review should avail itself of the insights of all interested Government agencies, as well as of economists, businessmen, lawyers, and other experts outside government.*

003866.

* The Department's appeal from the decision of the District Court in ITT-Grinnell raises a substantial danger that the Supreme Court will issue a decision broadly condemning diversification mergers, in view of the District Court's finding that the anticompetitive effects alleged by the Department were not supported by the facts. This is particularly true of the Department's contention that the mere possibility of reciprocal dealing (purchasing from customers) is enough to condemn a merger under Section 7 of the Clayton Act. This contention, if accepted by the Supreme Court, would bar almost any significant acquisition by a company with many suppliers.

We urge the Department, in order to make possible a review of Administration policy before national policy is irrevocably fixed by the Supreme Court on antitrust grounds alone, not to perfect its appeal in ITT-Grinnell by filing the Jurisdictional Statement which is due on April 20, 1971. If, after this review, the present policy of the Department of Justice regarding mergers and diversification were reaffirmed, there would be numerous other opportunities to present it to the Supreme Court, of which the ITT-Canteen and ITT-Hartford cases are only two. Moreover, if actual anticompetitive effects should ever develop from an ITT acquisition, the acquisition could be attacked when these effects developed, under the du Pont-GM decision of the Supreme Court.

I

A BAN ON SIGNIFICANT MERGERS AND DIVERSIFICATION WOULD INJURE VITAL NATIONAL INTERESTS

003867

The most important economic problem facing the United States today is the challenge to increase its economic efficiency in order to remain competitive in increasingly rigorous world markets. This challenge must be met if the United States economy is to continue its long-term growth at reasonably full employment. The challenge of remaining competitive in world markets is not something which Government policy can meet unaided, and it is not something which can be met by a simple, one-shot effort. Staying competitive will require a sustained national effort, and increasingly it will require that every economic resource the Nation possesses be utilized to the best advantage.

Diversification by merger is the most important guarantee that every economic resource of the Nation will in fact be used to the best advantage. A nondynamic industry must not be protected from constructive new forces. Through diversification, scarce management skills, additional resources of capital and know-how, and, most

important, the will and ability to plan for growth, can be brought to bear in new industries. These inputs are essential if an industry is to remain competitive. If an industry has ceased to generate these inputs itself as many industries, especially concentrated industries, have - they must be introduced from outside. There are only two ways of introducing these essential inputs from outside: Wholly new entry through internal development and diversification by merger. As a practical matter, completely new entry into an established industry is feasible only for (a) firms in closely related industries which have great similarities in production and marketing techniques, so that the vital business "know-how" is readily available and transferable to the new field, or (b) employees of established firms in the industry who use their know-how to set themselves up in business as competitors of their former employers. For any other types of persons or firms interested in entering a completely new industry, the lack of detailed industry know-how, combined with the high start-up costs of totally new products and marketing channels, is almost always prohibitive.

Thus diversification by merger is often the only effective means of stimulating new competitiveness

in established industries. The record shows that diversification mergers have served this purpose. ITT itself is a case in point. ITT stimulates the profit growth of each of its profit centers by helping them 003889 develop short-range and long-range plans for growth and by assisting them through a central management staff of over 1,000 industrial and operations specialists. Since 1960, ITT's earnings have grown at a steady compound rate of 11% a year. The improved competitiveness of companies which ITT has acquired is illustrated by the growth and development of subsidiaries such as Avis and Sheraton. ITT, in other words, has been able to apply modern management skills in such a way as to increase very substantially the efficiency and competitiveness of the companies it acquired. Many other companies which have diversified substantially by merger, such as Textron, Litton, TRW, Transamerica, Beatrice, and American Home Products, have also been successful in substantially increasing the competitiveness of the companies they acquired.

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For example, individual enterprise and ability are utilized and rewarded much more effectively by

companies built around modern management techniques than in many long-established companies.

The entrepreneurial enterprise which leads to the founding of new companies is stimulated far more 003870 effectively if an active market exists for the equity interests which the entrepreneur has built up in a successful company. The 3,751 acquisitions which occurred in 1970, the great bulk of which were diversification mergers, indicate the importance of this "capital market" for businesses.

Diversification is also essential to permit a company to hedge or insure against the risks inherent in business operations. Without diversification, a decline in business in one industry can have devastating results, as the downturn in the aerospace business has had in Southern California and the State of Washington.

ITT also illustrates the vital importance of such diversification to the Nation's balance of payments. Prior to World War II, ITT was a United States-owned telephone operating and manufacturing company with substantially all of its operations abroad. Most of its properties were expropriated or destroyed during the war. ITT has now rebuilt a substantial position abroad, particularly in Europe and Latin America. It employs

over 200,000 persons abroad, and is the third largest corporate contributor to a positive United States balance of payments, remitting over $300 million a year to the United States economy. 00387

However, the fundamental risks involved in significant foreign operations cannot be ignored. For example, ITT's $150 million investment in the Chile Telephone Company (only two-thirds of which is covered by government insurance purchased by ITT) is facing possible nationalization by the new Marxist government of Chile. Experience has shown that any compensation is likely to be small, paid only in local currency, and late. ITT has not yet received any compensation for its Cuban subsidiary, which was expropriated in 1960.

These risks of foreign operation must be balanced by a stable economic base in the United States. All of ITT's major international competitors, such as Siemens of Germany, Ericsson of Sweden, Mitsubishi, Hitachi, and Nippon Electric of Japan, and Northern Electric of Canada, have solid domestic bases in their home countries as well as active governmental support for their extensive export sales. This need for a stable domestic base is the basic reason for ITT's diversification program. If this diversification

into the United States economy is prohibited; the ability of ITT and other United States companies to assume the substantial risks of doing business abroad in a competitive world market will be substantially impaired.

These national interest questions, while of course they affect ITT vitally, do not affect ITT alone. On the contrary, a ruling banning all significant mergers and diversification would have broad repercussions throughout the economy.

003872

We recognize that the points we have made about the national interest implications of mergers and diversification are not uncontroversial. We earnestly submit, however, that they should not be dismissed as special pleading. Like views have been expressed by men who have long been identified with vigorous enforcement of the antitrust laws. For example, Professor Donald F. Turner has stated that a ban on leading firm acquisitions would make no significant contribution to the preservation of competition, but would limit one of the main avenues, and in many cases the only avenue, for improving the economic performance of inefficient companies. So far as we are aware, this conclusion is shared by most scholars in the field of antitrust law.

We respectfully suggest that it is timely

for the Department and the Administration as a whole to review their policy toward mergers and diversification.

II

THERE SHOULD BE A COMPREHENSIVE REVIEW OF ADMINISTRATION POLICY TOWARD MERGERS AND DIVERSIFICATION

003873

The report of President Nixon's Task Force on Productivity and Competition (the "Stigler Report") strongly recommended a comprehensive review of national policy toward mergers and diversification:

> "We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon."

The need for such a review is even more pressing today than it was when the Stigler Report recommended it, because of the danger that the ITT-Grinnell appeal to the Supreme Court will result in judicial legislation of a blanket condemnation of all significant mergers and diversification. Because the factual assumptions underlying the Department's anti-merger policy were not established in that case, it would seem appropriate to await another case in which the facts show a real

probability of substantial adverse effects on competition, rather than move to a more radical position on the law to compensate for a failure of proof. This process of policy should involve the Departments of Commerce, Labor, and the Treasury, speaking for the business economy, the interests of employees, and the balance of payments, and the Council of Economic Advisors, representing the national commitment to economic growth and full employment, as well as the lawyers in the Department of Justice who have specialized in this field. Such a full and balanced review of merger policy can only be carried out within the Executive Branch because the Supreme Court has made clear that in merger cases it will look to the antitrust laws alone, and will disregard any economic or other public benefits resulting from the merger.

Such a balanced, Government-wide review is needed to insure that the policy which results is truly in the national interest. Such a Government-wide review would be undertaken as a matter of course before the Administration sought a comprehensive statute from Congress which would ban all significant mergers and acquisitions. Such a review is equally necessary before the Department of Justice seeks to obtain such a prohibition through a Supreme Court decision which would have exactly the same

immediate impact as a statute [illegible] would be even more difficult to modify as experience showed its unwisdom.

CONCLUSION 003875

For the reasons given above, a comprehensive, Government-wide review of Administration policy toward mergers and diversification should be undertaken.

Respectfully submitted,

[illegible]

April 16, 1971

TO: The Honorable Peter G. Peterson

Dear Pete:

As requested, here is a copy of the letter to Dick Kleindienst asking for a delay. Such a request is backed up by a memorandum supporting this delay.

Sincerely,

B

P.S. The letter and backup were delivered to Dick Kleindienst this afternoon because Mitchell, Griswold, and McLaren are all out of town. Dick Kleindienst has asked McLaren's assistant to tell him whey they should not grant a delay since there is nothing critical about the timing. Thought you should know this in case you happen to talk to Kleindienst.

John E
has this air—
B

W. R. MERRIAM
ITT Washington Relations

NOTE: THE LETTER TO RICHARD KLEINDIENST AND ATTACHED MEMORANDUM WHICH ARE REFERRED TO ABOVE MAY BE FOUND ON PAGES 287-303.

12.5 WILLIAM MERRIAM LETTER, APRIL 16, 1971

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION
1707 L STREET, N.W.
WASHINGTON, D.C. 20036

WILLIAM R. MERRIAM
VICE PRESIDENT
DIRECTOR WASHINGTON RELATIONS

April 16, 1971

The Honorable
John D. Ehrlichman
Assistant to the President
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500

003862

Dear John:

I am attaching a copy of a memorandum Mr. Geneen left with Pete Peterson this afternoon. Also attached is a letter to Dick Kleindienst asking him to delay the Justice Department's appeal to the Supreme Court while a review is being made by members of the Executive Branch of the Government.

This letter is backed by a memorandum for the Department of Justice in support of such a review.

Sincerely,

Bill

Attachments

P.S. The letter and backup were delivered to Dick Kleindienst this afternoon because Mitchell, Griswold, and McLaren are all out of town. Dick Kleindienst has asked McLaren's assistant to tell him why they should not grant a delay since there is nothing critical about the timing. Thought you should know this in case you happen to talk to Kleindienst.

APR 24

NOTE: THE LETTER TO RICHARD KLEINDIENST AND ATTACHED MEMORANDUM WHICH WAS REFERRED TO ABOVE MAY BE FOUND ON PAGES 287-303.

13. On Monday morning, April 19, 1971 Kleindienst told Walsh by telephone that Kleindienst did not think the ITT-Grinnell appeal would be delayed. In a memorandum dated April 19, 1971 to Kleindienst, McLaren disputed the position taken by Walsh in his letter and memorandum of April 16 and urged that the ITT-Grinnell appeal not be delayed.

Page

13.1 Lawrence Walsh testimony, 3 KCH 1039..... 308

13.2 Memorandum from Richard McLaren to Richard Kleindienst, April 19, 1971 (received from Department of Justice).... 309

I don't have—I really have no perfect recollection of this now but my impression is that the contents of my letter are probably pretty much what I told him over the phone.

He said that —you know—he indicated that probably it should be for Mr. McLaren and that he also indicated that he was quite sure that Mr. Mitchell would not want to be concerned with this matter, but to send it down and in a sense he would figure out what to do with it when he got it.

So Mr. Struve did take it down to him, delivered it by 3 o'clock on April 16. He went in to Mr. Kleindienst's office with it and Mr. Kleindienst sent for Mr. Comegys, who was the first assistant in the Antitrust Division, and turned it over to him. I believe Mr. McLaren was probably out of town but I am not sure.

Mr. Struve—I told Mr. Kleindienst that Mr. Struve was authorized to answer any questions that either he had or anybody in the Antitrust Division might have with respect to the memorandum, but neither of them chose to ask him any; and I think Mr. Comegys indicated he didn't think it was necessary and Mr. Struve came back.

The next I heard was Mr. Kleindienst called me early in the morning on April 19. I was not in the office. On April 19 and 20——

Senator KENNEDY. Could I just interrupt you?

Mr. WALSH. Yes.

Senator KENNEDY. Before you leave the 16th——

Mr. WALSH. Yes, sir.

Senator KENNEDY. How many conversations did you have with Mr. Kleindienst on the 16th?

Mr. WALSH. I had two, but I believe only one related to ITT. I have a feeling the first one related to probably a judiciary matter.

The first conversation was 4 minutes long; the second one was 2 minutes or less, and I believe that it would have been at the end of that 4 minute conversation I told him that I might call him on this but I have no recollection of that. I believe it was a 2 minute conversation that concerns ITT.

On the following Monday, the 19th and the 20th, I stayed away from the office to get ready for an argument on an altogether different case which I had to make on April 21, so I stayed home and I called in around 10:30 in the morning and found that Mr. Kleindienst had called me earlier that morning and I called him back at that time and apparently got him in the middle of a meeting, and the essence of what he said was that they had—he had considered the memorandum and had had a meeting with respect to it but he did not tell me who; he told me he thought the answer was going to be no, but he couldn't talk to me but he would call me later. I told my secretary when he called to let me know the next time.

So he called in again about 4:30 that afternoon and at that time said that he had talked with the Solicitor General and the Solicitor General had arranged with Covington and Burling for a 30 day extension of the filing of the jurisdictional statement in the *Grinnell* case. Again, he didn't have time to discuss the matter at length then, that he would again talk with me about it when he had a chance.

I told Mr. Aibel on each occasion what Mr. Kleindienst had told me. I knew by that time—Mr. Aibel and I both knew at that time that

Mr. McLaren
Mr. Comegys

Richard G. Kleindienst
Deputy Attorney General

April 19, 1971

Richard W. McLaren
Assistant Attorney General
Antitrust Division

ITT-Grinnell Appeal

I have reviewed the Davis Polk letter of April 16 on the above subject and my comments are set forth below.

The ITT-Grinnell case raises no question whatever "of whether diversification mergers should be barred . . . ." Although our views on major conglomerate mergers have been known for two years now, and despite the downturn in the stock market and the economy, diversification mergers in 1970 still ran in the neighborhood of 3,000. ITT itself made fifteen conglomerate-type acquisitions in the first eight months of 1970 and, under the Clayton Act as we interpret it, these acquisitions did not violate the law.

Also, a Supreme Court decision in ITT-Grinnell will not necessarily plow new ground. We tried this case on the theory that the merger generated undue reciprocity power (relying on the Supreme Court's Consolidated Foods decision), and that it would entrench Grinnell, which is a dominant company in the sprinkler business (relying on the Supreme Court's decision in Procter & Gamble-Clorox). As a third ground, we urged the legislative history of Section 7, i.e., that Congress specifically stated that the Section 7 amendments adopted in 1950 were designed to reach vertical and conglomerate mergers, as well as horizontal ones, and to stem the tide of advancing economic concentration by merger.

ITT's appeal comes at a very late hour. We filed our notice of appeal in the Supreme Court on March 1st. ITT has had seven weeks to make its pitch for an

Administration policy review. We have already had one extension of time from the Supreme Court and it would be highly embarrassing to ask for another, when our jurisdictional statement is due to be filed tomorrow (April 20). Any such request certainly would be taken as a sign of weakness, and very possibly could undermine the big-merger deterrent which we have thus far developed.

I know you have very much in mind the strong position I have taken with regard to using Section 7 of the Clayton Act to hold down the most anticompetitive kinds of conglomerate mergers -- both for the good of the economy and because, if this position is not accepted, we almost certainly will have high restrictive legislation. Mr. Mitchell agreed with this program before Inauguration Day and personally went on record in support of it in his Savannah speech in June of 1969. I certainly do not mean to suggest that we should follow a policy which has proved a bankrupt one just for the sake of consistency. But in this case, to solicit the opinions of Commerce, Labor, et al, would amount to abandoning a basic policy of the Department when the reasons for continuing it are just as strong as they ever were.

14. Beginning at 3:03 p.m. on the afternoon of April 19, 1971 the President met with Ehrlichman and George Shultz, Director of the Office of Management and Budget. The antitrust actions against ITT were among the subjects discussed. Ehrlichman said that the deadline for the ITT-Grinnell appeal was the following day and he reported that, despite his attempts to give the Justice Department "signals," the appeal was being pursued. The President then telephoned Kleindienst and ordered him to drop the appeal. After the telephone conversation the President expressed his concern that McLaren's actions with respect to conglomerates were contrary to the Administration's antitrust policy.

Page

14.1 Tape recording of conversation among the President, John Ehrlichman and George Shultz, April 19, 1971, 3:03 - 3:34 p.m., and House Judiciary Committee transcript thereof..... 312

14.2 Tape recording of telephone conversation between the President and Richard Kleindienst, April 19, 1971, 3:04 - 3:09 p.m., and House Judiciary Committee transcript thereof 346

TRANSCRIPT PREPARED BY THE IMPEACHMENT INQUIRY STAFF FOR THE HOUSE JUDICIARY COMMITTEE OF A RECORDING OF A MEETING AMONG THE PRESIDENT, JOHN EHRLICHMAN AND GEORGE SHULTZ ON APRIL 19, 1971 FROM 3:03 TO 3:34 P.M.

PRESIDENT: Yeah. Let's see [unintelligible]

EHRLICHMAN: Yeah. [Unintelligible] antitrust thing.

PRESIDENT: No [unintelligible]

UNIDENTIFIED: Um hm.

EHRLICHMAN: We are going to see the Attorney General tomorrow, and by then it may be too late, in a sense,

PRESIDENT: Hm. Honestly?

EHRLICHMAN: ITT case, where God knows we have made your position as clear as we could to Mr. what's-his-name over there.

PRESIDENT: McLaren.

EHRLICHMAN: And, uh, John has said because ITT is involved, he's not involved because he's got a conflict of interest going back to the old law firm.

PRESIDENT: Huh, [unintelligible]

EHRLICHMAN: Richard Kleindienst, uh, uh, has been supervising McLaren's work. It's the Grinnell case. It involves an attack on, uh, conglomerates, on a theory which specifically had been contemplated by the Johnson Administration and laid aside as too anti-business.

NOTE: The quotation marks used in this and other House Judiciary Committee transcripts are for convenience and do not indicate verbatim quotation by the speaker.

PRESIDENT: Kleindienst is in this? [Picks up telephone.]

EHRLICHMAN: Yes.

PRESIDENT: [To telephone operator] Dick Kleindienst. [Hangs up.]

EHRLICHMAN: And --

PRESIDENT: How long before that [unintelligible] do you expect a moritorium?

EHRLICHMAN: Well, they filed a notice of appeal. If

PRESIDENT: Who did?

EHRLICHMAN: we do not file a statement of jurisdiction by tomorrow the case is dead, and, uh,

PRESIDENT: Who?

EHRLICHMAN: uh -- the Justice Department.

PRESIDENT: They're not going to file.

EHRLICHMAN: Well, I thought that was your position.

PRESIDENT: Oh, hell.

EHRLICHMAN: I've been trying to give, I've been trying to give them signals on this, and, uh, they've been horsing us pretty steadily. Uh, uh, Geneen --

PRESIDENT: Statement of jurisdiction.

EHRLICHMAN: Right.

PRESIDENT: I don't want to know anything about the case. Don't tell me a

EHRLICHMAN: Yeah, I won't.

PRESIDENT: thing about it. I don't want to know about Geneen. I've met him and I don't know -- I don't know whether ITT is bad, good, or indifferent. But there is not going to be any more antitrust actions as long as I am in this chair.

EHRLICHMAN: Well, there's one --

PRESIDENT: God damn it, we're going to stop it.

EHRLICHMAN: All right. There's this other one that you are going to talk to John about tomorrow on the networks.

PRESIDENT: Well, I don't want him to do that, for other reasons.

EHRLICHMAN: Well, that's right. This, that's --

PRESIDENT: This is the wrong time.

EHRLICHMAN: These are all coming together.

PRESIDENT: We wanted to do that at another time.

EHRLICHMAN: Okay, but that's all coming together you see at this point in time, so uh, uh, it's, it's [unintelligible]

PRESIDENT: Where's Kleindienst? Isn't he in town?

EHRLICHMAN: Yeah. He's in his office. I just talked to him about an hour ago. And, uh --

PRESIDENT: Well, we'll take care of it.

EHRLICHMAN: Okay. Beyond that, uh --

PRESIDENT: [Unintelligible] cut out this damn thing, Bob -- , John.

SHULTZ: In this, uh, talk that I am making speeches --

PRESIDENT: Yeah, you talking economic,

SHULTZ: Yeah,

PRESIDENT: [Unintelligible] great.

SHULTZ: which I quote you with, uh -- I'd like to get you to riffle through it when I'm done to

PRESIDENT: Sure, I will.

SHULTZ: see what kind of shape, but there is a section on the question of is there something new about the economy today. Has business become more monopolistic, and so on. And I go through the various studies of [Telephone buzzes] concentration and the vertical integration and --

PRESIDENT: [Picks up telephone.] Yeah.

Hi, Dick, how are you?

Fine, fine. I'm going to talk to John tomorrow about my general attitude on antitrust, and in the meantime, I know that he has left with you, uh, the IT & T thing because apparently he says he had something to do with them once.

Well, I have, I have nothing to do with them, and I want something clearly understood, and, if it is not understood, McLaren's ass is to be out within one hour. The IT & T thing -- stay the hell out of it. Is that clear? That's an order.

The order is to leave the God damned thing alone. Now, I've said this, Dick, a number of times, and you fellows apparently don't get the me-- , the message over there. I do not want McLaren to run around prosecuting people,

raising hell about conglomerates, stirring things up at this point. Now, you keep him the hell out of that. Is that clear?

Or either he resigns. I'd rather have him out anyway. I don't like the son-of-a-bitch.

The question is, I know, that the jurisdiction -- I know all the legal things, Dick, you don't have to spell out the legal --

That's right.

That's right. Don't file the brief.

Your -- my order is to drop the God damn thing. Is that clear?

Okay. [Hangs up.]

SHULTZ: Anyway, looking --

PRESIDENT: I hope he resigns. He may.

SHULTZ: If you look at concentration ratios over a period of time, on horizontal integration, if you look at ratios of sales to value added on vertical integration, what you find is no evidence of any increase in, in monopoly in American business. In fact, over a thirty-year period, and I checked this over with my friend Stigler who has made a lot of these studies. If anything, you see a decline. And in the conglomerate area is what I think we are witnessing, is, uh, a sort of a reaction to the buildup of conglomerates, which is perhaps affected somewhat by the antitrust. But basically, the market place is taken care of, in a sense that a lot of the firms that acquired businesses that they really didn't know anything about, are finding that they can't run those businesses very well, and they are getting rid of them. And, uh, so there is a cleansing process taking place. And where you have, uh, where you have a [unintelligible] of conglomerates, I believe, the case can be made, uh, rather readily in, uh, many, many instances, that they add to the sharpness of competition, because they acquire a relatively small firm, they give it muscle and they send it into, into competition and make the market work better. At least this is the, this is the general posture that I'm taking in this, uh, talk. I believe that the evidence -- I don't -- I mean I don't -- I'm not a lawyer and I don't know all of that side of it.

EHRLICHMAN: You're not the only one.

SHULTZ: From the standpoint of the economics of it, uh, I would be the last to say we should not continue, uh, to, uh, pursue the antitrust laws in the proper way, but, the, uh -- I think the conglomerates have taken a bum rap.

PRESIDENT: This is, this is the problem. The problem is McLaren's a nice little fellow who's a good little antitrust lawyer out in Chicago. Now he comes in and all these bright little bastards that worked for the Antitrust Department for years and years and years and who hate business with a passion -- any business -- have taken him over. They haven't taken him over. Then of course McLaren is the man. They go into -- Kleindienst is busy appointing judges; Mitchell is busy doing other things, so they're afraid to overrule him. By God they're not going to do it. I mean the point is that on this antitrust they had deliberately gone into a number of areas which have no relationship with each other, to -- whether it's a question of operating more, more efficiently than the rest. There's simply a question of tactically, they've gone off on a kick, that'll make them big God damn trust busters. That was all right fifty years ago. Fifty years ago maybe it was a good thing for the country. It's not a good thing for the country today. That's my views about it, and I am not -- We've been, been through this crap. They've done several of them already about -- They have raised holy hell with the people that we, uh, uh -- Well, Geneen, hell, he's no contributor.

He's nothing to us. I don't care about him. So you can -- I've only met him once, twice -- uh, we've, I'm just, uh -- I can't understand what the trouble is.

EHRLICHMAN: Well,

PRESIDENT: It's McLaren, isn't it?

EHRLICHMAN: McLaren has a very strong sense of mission here.

PRESIDENT: Good -- Jesus, he's -- Get him out. In one hour,

EHRLICHMAN: He's got a

PRESIDENT: one hour.

EHRLICHMAN: very strong --

PRESIDENT: And he's not going to be a judge, either. He is out of the God damn government. You know, just like that regional office man in, in, in San Francisco. I put an order into Haldeman today that he be fired today.

EHRLICHMAN: Yeah.

PRESIDENT: Today. Anybody that didn't follow what we've done per the latest'd have his ass out. Unless he is a -- What is he, is he a Republican hack or something?

EHRLICHMAN: No, I don't even know who he is.

PRESIDENT: How could he -- I mean, that's ridiculous that he went through there with one

EHRLICHMAN: Five --

PRESIDENT: applications out of four thousand he'd been processing. He didn't follow what we said. To hell with him. We've got to be a little bit more effective here. You're not going to [unintelligible]. Oh, I know what McLaren is, he believes this.

EHRLICHMAN: Yeah.

PRESIDENT: I know. Who the hell -- he wasn't elected [unintelligible]

EHRLICHMAN: That's the point --

PRESIDENT: He is here by sufferance.

EHRLICHMAN: That's the point.

PRESIDENT: And he is not going to stay one, uh, another minute. Not a minute. Because he's going after everybody, you know, just -- Why the hell doesn't he go after somebody that, uh --

EHRLICHMAN: [Laughs] That's been suggested.

PRESIDENT: Oh.

EHRLICHMAN: Your, uh, your television sense is apparently pretty good. They, uh, you know, we got, uh, a narcotics show on.

PRESIDENT: Did you?

EHRLICHMAN: Uh, called "O'Hara - The United States Treasury," and it had a hell of a rating its first, uh, its first time --

PRESIDENT: "O'Hara" was it called?

EHRLICHMAN: It was called: "O'Hara - The United States Treasury."

PRESIDENT: I saw it.

EHRLICHMAN: They, they sent it over.

PRESIDENT: I saw it.

EHRLICHMAN: Is it any good? It got a, it got a twenty-eight, uh, in seventy cities, uh, on its Neilson, so it's, it's apparently pretty popular. [Unintelligible]

PRESIDENT: Hm.

EHRLICHMAN: So, uh --

PRESIDENT: You know, all of those spy shows get great thing you know,

EHRLICHMAN: Yeah.

PRESIDENT: Well, anyway -- It was a good show. It was a, like all those things. My God, they had, uh, they had guys chasing, chasing people with, uh, airplanes and all that sort of thing. I don't think it quite worked that way, but, at least they still can [unintelligible] bring the stuff in.

EHRLICHMAN: Yeah.

PRESIDENT: And it's fascinating.

EHRLICHMAN: Well, it's a thirteen week series, it opened up.

PRESIDENT: Yeah.

EHRLICHMAN: Be going on now.

PRESIDENT: Right. Yeah.

EHRLICHMAN: Uh, you asked for a PR plan on crime. The, uh --

PRESIDENT: Get any cooperation?

EHRLICHMAN: Well, uh, we've got our boys working on it. It is going to take a little time, 'cause we're shifting into another phase on this whole thing now.

PRESIDENT: What's the crime now?

EHRLICHMAN: Well, crime statistics are going to start running against us regardless of --

PRESIDENT: We can do, because -- ?

EHRLICHMAN: -- because of the entry of more and more kids into that -- what is it, fifteen to, fifteen to twenty age bracket. They expect that burglaries and robberies, for instance, are going to go up thirty per cent in the next few years, just from the number of fifteen to twenty-four year olds that are going to increase. They're going to have that many more, so just statistically, the probabilities --

PRESIDENT: Well, what if you can't do anything about it?

EHRLICHMAN: Well, we can't on that, probably, but there are a lot of other things that we can do and we're trying to gin up a bunch of stuff on other aspects of crime that we can get into, other than --

PRESIDENT: How about turning to this, if the mugging, if the mugging [unintelligible]

EHRLICHMAN: We're still, we're still doing pretty well there, Mr. President.

PRESIDENT: Let's try to knock that down. That's where we had a responsibility,

EHRLICHMAN: Right.

PRESIDENT: and then blame the states for failing to knock this down.

EHRLICHMAN: We can, we can do that. We can do that.

PRESIDENT: All right.

EHRLICHMAN: And, uh, we've been, been working with Wilson on some more things that we could do here. But, uh, uh, George and I have been talking a little bit about our District of Columbia situation, and, we're going to have to, we're going to have to be sure that our management of that is, is very tight, 'cause the only way that we get these results is by just really keeping on top of these guys every day.

PRESIDENT: Yeah. Who is, uh --

EHRLICHMAN: So, anyway --

PRESIDENT: Who's in charge?

EHRLICHMAN: It'll be [unintelligible] and there will be some [unintelligible]

PRESIDENT: Who's in charge in the district. Mayor?

EHRLICHMAN: Nathan. Right. Now, then, in to the Mayor, uh, Watt, the Deputy Mayor, who is kind of [unintelligible] and to the Chief of Police. Klein's moved each one of those fellows separately, and we, we, work on each one of them differently.

PRESIDENT: It can be done here in the District, and I think we can settle it.

EHRLICHMAN: Our PR campaign itself -- that's going to take a little more time than had been allowed [unintelligible] bear with us a little bit more and so --

PRESIDENT: Well, we're going after drugs. We just want to be sure that we, uh,

EHRLICHMAN: -- show that the --

PRESIDENT: show the radicals something -- you doing something, John.

EHRLICHMAN: Well, the Mafia, the organized crime thing, we show quite a lot of action. Bombing things,

PRESIDENT: Good.

EHRLICHMAN: we'll get a break in the Capitol bombing case one of these days.

PRESIDENT: Right.

EHRLICHMAN: They think they know who did that. This --

PRESIDENT: What -- is the Grand Jury cranking out one count, or what?

EHRLICHMAN: It's the same, uh,

PRESIDENT: Weathermen?

EHRLICHMAN: Bernadette Dorne, uh, Rennie Davis bunch.

PRESIDENT: Good.

EHRLICHMAN: And, uh, they've, they've got an informant, and they're working on it, and they're beginning to develop their lines on that. The, uh, they're about to bust the, uh, FBI burglary of that branch office, and, that comes all back to the Berrigan crowd.

PRESIDENT: Oh, uh, oh, is that it?

EHRLICHMAN: Yeah.

PRESIDENT: That'd be terrible.

EHRLICHMAN: Yeah. And, uh, they --

PRESIDENT: They brought one on us?

EHRLICHMAN: They brought a reindictment. All that Berrigan bunch, the co-conspir-- , conspirators, on a broader, on a broader indictment basis, uh, that has to do with, uh, subverting the whole selective service system. And, each one of these burglaries, and each one of these destruction of files and all that, fits within the larger context. So, we are going through another grand jury proceeding right now on that. There will be quite a lot activity on, on, that kind of extreme violence front. Even though the street crime thing is not going to show up very well. We're going to have to put our accent where we can. The prison thing, the court reform thing, and those other things that are really significant, but are less sexy, we'll continue to push along on. And, there are some things we can do there.

PRESIDENT: [Unintelligible] others in this if we can.

EHRLICHMAN: Well, we -- the kind of thing we were talking about where you, where you visit this, this, uh,

PRESIDENT: Yeah.

EHRLICHMAN: this facility and, uh, some of those things begin to point at some of these areas -- your interest in them and, and, uh, so on. We'll be coming at you with a program. On suburban housing, uh, Supreme Court decided the case the other day, called the Lackawanna case -- Lackawanna, New York -- that's a case where the, where the Court found as a matter of fact that the zoning rested on a racially discriminatory basis; struck the zoning down.

PRESIDENT: Yeah.

EHRLICHMAN: Uh, I think there's enough in that decision, that you can say: Okay, we now know what the law is -- the Supreme Court decision -- we now know what the law is. So, we are going to enforce the law and that's going to take care of all these associated problems here.

PRESIDENT: What does it do again?

EHRLICHMAN: Well, it, uh, in effect it announces the law, with regard to racial discrimination, in the location of housing proj--, Fed--, Federally assisted housing projects.

PRESIDENT: And, and, says what?

EHRLICHMAN: Says that the trier of fact will determine whether or not there was a racial motivation from the exclusion of this. If he finds that there was, it's illegal; if he finds there wasn't, then it isn't. And so this comes down to a question of fact in each case, for the, for the Court -- for the trier of fact. The Court is the proper forum for this. Not the administrative officer in HUD. So it -- I think we can make something that will be along the lines of your, your basic thinking on this.

PRESIDENT: [Unintelligible] comes down the middle in cases.

EHRLICHMAN: Well, it isn't down the middle. It, it, what it says is, that every one of these is a separate case to be decided on it's

PRESIDENT: So you don't --

EHRLICHMAN: own facts by the Court.

PRESIDENT: You don't have, then, a national --

EHRLICHMAN: You don't have national decisions done on the military basis of the Department of Housing and HEW.

PRESIDENT: [Unintelligible] the Black Jack case, or not?

EHRLICHMAN: Well, it says the Black Jack case ought to be litigated, and uh -- All of these cases ought to be litigated.

PRESIDENT: The Supreme Court --

EHRLICHMAN: In S--, Supreme Court denied certiorari.

PRESIDENT: Have you told John, uh, -- does Romney know this?

EHRLICHMAN: Well, he knows the case came down, sure.

PRESIDENT: Does he understand it?

EHRLICHMAN: I think so. I think he does. But I've held everybody off pretty much, and said that

PRESIDENT: Good.

EHRLICHMAN: This thing is now in process.

PRESIDENT: That's where it ought to be.

EHRLICHMAN: And, we're, we're just holding it there. But, I got to make a trip west --

PRESIDENT: What's the size of the opinion, opinion? Was it, uh, unanimous?

EHRLICHMAN: Uh.

PRESIDENT: Did they just deny certiorari?

EHRLICHMAN: Denied certiorari. So we don't know. The Circuit Court was a very strong opinion. And, uh, uh, I think, uh, probably it's good law, by and large.

PRESIDENT: The Court finally decided not to get into this.

EHRLICHMAN: Yes, at least --

PRESIDENT: That's good.

EHRLICHMAN: Uh, now, about the first of next week,

PRESIDENT: Yeah.

EHRLICHMAN: uh, we're going to be in shape to start drafting a policy statement on this, if you wish. Uh, the other thing we could do is simply make an announcement, that,

as far as the Black Jack case itself is concerned, in view of the Lackawanna case, and some of these other considerations,

PRESIDENT: Yeah.

EHRLICHMAN: uh, we are going to, we're going to take the position that, the party should litigate these without the intervention of the Department

PRESIDENT: That's right. That's better.

EHRLICHMAN: of Justice.

PRESIDENT: That's better. The main point is that -- keep us out of it, if you can. I mean it's, uh, it's, uh, a can of worms. No way you can -- I, I prefer a different course --

EHRLICHMAN: Once you did -- but, but, then the question is: Does the Department of Justice intervene

PRESIDENT: No.

EHRLICHMAN: in all these cases, you see? Once you start that,

PRESIDENT: No. No.

EHRLICHMAN: uh, see, you've got a, you got a kind of a blank check.

PRESIDENT: You [unintelligible] Leonard Garment who I'd never [unintelligible] but --

EHRLICHMAN: [Laughs] You'd be in every damn case.

PRESIDENT: You'd be eager to --

EHRLICHMAN: Yeah, so, uh, what we try and do is to begin to draft, uh, a concise statement

PRESIDENT: A concise statement --

EHRLICHMAN: that, uh, [unintelligible]

PRESIDENT: it's, it's [unintelligible]. Waffles it and gets out of it.

EHRLICHMAN: Well, we're not going to be permitted a very good waffle, I am afraid. Uh, it's going to be subject to tremendous scrutiny. But, uh,

PRESIDENT: All right.

EHRLICHMAN: we'll try to make it as tight as we can, and indicate why it is

PRESIDENT: Good.

EHRLICHMAN: that the Federal Government cannot be intervening in every way.

PRESIDENT: Yeah. One of the reasons, George, that you got to act on that SBA guy -- I don't care if he's a kid with eight -- a guy with eighteen kids -- is that we have no discipline

in this bureaucracy. We never fire anybody. We never reprimand anybody. We never demote anybody. We always promote the sons-of-bitches that kick us in the ass. That's true in the State Department. It's true in HEW. It's true in OMB, and true for ourselves, and it's got to stop. This fellow deliberately did not -- I read the memorandum -- he did not carry out an order I personally gave. I wrote the order out [unintelligible]. And, the son-of-a-bitch did not do it. Now, I don't care what he is. Get him out of there. Get him out of San Francisco, if he's, he's -- the head is got to roll. I'd roll Kleppe's if it weren't for the fact that I know that Kleppe wasn't in there long enough to know where the toilet was. But this guy, in San Francisco, was the head of the Office. He was incompetent. I'm sure it wasn't deliberate. He was either incompetent or deliberately just didn't do it. So -- but, the main point is, and I like, as I told Haldeman, it's got to be done with publicity. And, let him roll. So that -- as a warning to a few other people around in this Government, that we are going to quit being a bunch of God damn soft-headed managers. I really think you got to do it.

EHRLICHMAN: Yeah.

PRESIDENT: You've got to do it. That is the trouble with McLaren. McLaren thinks he's going to do everything. To hell with him. I mean, we, we're willing to go along with it, but he cannot deliberately just thumb his nose at everything that comes from this office, John. He is not that big, and of course, if John Mitchell won't stand up to him, I will. I don't want to, but I'll have to. We are not going to have it. All that they have to do in this case -- I know what the procedure is -- is that the Justice Department decides whether or not it's going to continue to fight the case. Isn't that what it is?

EHRLICHMAN: Right.

PRESIDENT: Then -- well, God damn it, they lost the case before. Lose it. Lose it for once. They fought the good fight, and they lost. And, let the little bastards work on something else. Work on the study that you've asked them to send us. That would be very good.

EHRLICHMAN: That would be done here.

PRESIDENT: I'll say. You've got to get us some discipline, George. You've got to get it, and the only way you get it, is when a bureaucrat deliberately thumbs his nose, we're going to get him. Now next year, we're going to get

this -- that time, after time, after time, and again. The little boys over in State particularly, that are against us, will do it. Defense, HEW -- those three areas particularly. They've got to know, that if they do it, something's going to happen to them. Where anything can happen. I know the Civil Service pressure. But, you can do a lot there, too. There are many unpleasant places where Civil Service people can be sent. We just don't have any discipline in government. That's our trouble. Now, I'm getting a little around the White House, uh, but we got to get it in these departments. That should not have happened. That was a terrible thing. One hundred and five applications processed out of four thousand in four months, three months or whatever it was -- two months. God damn it, that's terrible. All at the time of his, his [unintelligible]. So, whatever you -- well, maybe he is in the Regional Office. Fine. Demote him, or send him to the, send him to the Guam Regional Office. There's a way. Get him the hell out.

EHRLICHMAN: You're going to have a revenue sharing hearing starting on Friday.

PRESIDENT: Yeah.

EHRLICHMAN: On rural revenue sharing.

PRESIDENT: Yeah.

EHRLICHMAN: Uh, we talked sometime ago about --

PRESIDENT: Rural revenue sharing.

EHRLICHMAN: Yeah.

PRESIDENT: Yeah.

EHRLICHMAN: It comes up as a result of, of some hearing taken to the Senate. [Unintelligible] subject to ecomonic development in the nation was shifted over to this, as I understand it. We talked about John Connally being a, sort of the Administration admiral on this.

PRESIDENT: Yeah.

EHRLICHMAN: Uh, this would be a place for him to sort of kick it off, and, uh, if you have no objection, I'd like to get him briefed up and, and, lined up to go in on this, instead of just Cliff Hardin. Because I am afraid, if, if, we lead off

PRESIDENT: [Unintelligible]

EHRLICHMAN: weakly, uh -- I think that Hardin will have to be in it, but, uh --

PRESIDENT: I know, but he --

EHRLICHMAN: To get the thing off on the right foot, I'd like to, I'd like to start with Connally on these.

PRESIDENT: Well, if he's willing.

EHRLICHMAN: Okay.

PRESIDENT: I mean, we, we want to remember there's a big gun: don't want to pop it too often.

EHRLICHMAN: Oh no, no, but it'll --

PRESIDENT: It'll waste it.

EHRLICHMAN: This is a, this is one that everybody's going to be watching, in effect.

PRESIDENT: Really?

EHRLICHMAN: Well, I, I have to assume so. It's, uh, it'll be the first,

PRESIDENT: What about general revenue sharing?

EHRLICHMAN: be the first consideration you see and we won't get to general revenue sharing in Ways and Means for another, oh, I guess six weeks probably, isn't it George?

SHULTZ: Something like that. It could be before that, and as I suppose somewhat--I don't know whether or not we can work out anything

with Mills. And, have you had a chance to look at the various formulas that Harper and, uh, O'Neil --

EHRLICHMAN: Uh, I haven't been able to talk to him about it, though, 'cause I don't understand it all.

PRESIDENT: That happens for tomorrow.

EHRLICHMAN: It, it just seems to me with that the first hearing on the subject, that we would be wise to get Connally to put it in context.

PRESIDENT: How does it look?

EHRLICHMAN: And, uh, uh, I think it looks better now than it did because we gave them an extension business. And

PRESIDENT: This is reorganization. Oh, is this the new [unintelligible]

EHRLICHMAN: [Unintelligible]. Oh yes.

PRESIDENT: That had to do --

EHRLICHMAN: That had to do with revenue sharing.

SHULTZ: Both, well, both -- [clears throat]

PRESIDENT: Oh, I see it. Uh, uh, a maintenance of that agreement rather than [unintelligible] I see. [Unintelligible] I see.

EHRLICHMAN: So that would be the facts of the particular --

PRESIDENT: Well, [unintelligible] would be great to do it, then, if he would.

SHULTZ: All right. We'll see if we can --

PRESIDENT: He knows that,

EHRLICHMAN: He is coming over this afternoon to talk about it.

PRESIDENT. he knows that part of the country and he knows the farmers, and he knows -- uh, sort of kick off the reorganization and everything. He'd be an excellent guy to make the presentation, if he is willing. Well, also, assure him that we're not [laughs] going to send him up there every week.

EHRLICHMAN: Yeah.

PRESIDENT: 'Cause that's not right. It's going to, it's a waste of a good property. And you only can use him, you know, and I don't, I don't want that hauling him up there, wasting his time.

EHRLICHMAN: Yeah.

PRESIDENT: [Unintelligible] whether we've got anything more we can move revenue sharing, and -- How did you get along with Mills, or, do you know him?

SHULTZ: I haven't been back to him since the last time we talked because we are trying to, to see what kind of a proposal we can get up and what, how different formulas work, and how they affect the various states and so forth.

PRESIDENT: Well --

SHULTZ: So, I haven't done, wanted him to --

PRESIDENT: You mean he'd desire to move the thing?

SHULTZ: He'll --

EHRLICHMAN: [Unintelligible] his staff worked on it.

PRESIDENT: Oh, I see.

EHRLICHMAN: Which is not done.

PRESIDENT: I've argued where he is waiting for us to present to him --

SHULTZ: The last time I talked to him, I just described the, the general approach, and, uh, we talked about it, and he, he, uh, liked it. So, I said, well, I would work on it some more. And I'd talk to you about it. And, uh, said I didn't know whether you would buy this kind of thing or not. But anyway, uh, this was a, uh, this was a, uh, this was an effort to try to see if there wasn't some common ground, and that, uh, we'd try to, uh, develop something a little bit more specific, so we can see how it

affects this state and that state and so on.

PRESIDENT: George, look here. Isn't really the case this: [Unintelligible] Mills or Byrnes or anybody else ever come up with anything else of their own thinking? Right up --

SHULTZ: Really, nothing.

PRESIDENT: Isn't that true? Well then, really, really, uh, we just got to press ours. I mean, if theirs, if that's the case [unintelligible] and, uh, and who's, who -- if anybody's got a better thing, let's take it.

EHRLICHMAN: Uh, Byrnes is sort of hipped on tax credits.

PRESIDENT: Oh, God.

EHRLICHMAN: I talked to Mel Laird at some length, uh, last week about, uh, our problem with Byrnes --

PRESIDENT: Yeah, he knows him well.

EHRLICHMAN: And, he is going to talk to him over the weekend, and see if he could

PRESIDENT: Hm.

EHRLICHMAN: midwife some accommodation on this,

PRESIDENT: Yeah.

EHRLICHMAN: uh, so, uh, I expect to hear from Mel today.

PRESIDENT: Byrnes, you see, really plays into the hands of the, our political opponents here by sort of talking away -- which is, all it does is simply -- it raises an issue. Of course, he isn't going to get tax credit, so, therefore by raising -- all he does is to stop our program and give them a chance to say: well, program isn't even begun.

EHRLICHMAN: He is causing great confusion among the Republicans on Ways and Means,

PRESIDENT: Is he?

EHRLICHMAN: because he, he's not showing any leadership, and, uh, he's giving them an anti-Administration signal without any place to go.

PRESIDENT: Isn't that great?

EHRLICHMAN: And so, uh, Mel is going to talk to him in those terms, and see if --

PRESIDENT: Mel said he would? Do you think Mel will?

EHRLICHMAN: Yeah. I believe so; I believe so. See, we hopped over there in response to his remark to you, where he said, you know, revenue sharing wasn't floating. So,

Mel said he would. He said that to you one day. I am sure you sent him a memo and, and we arrived in force and, uh, sat down with him and said: Okay, what's wrong with it? What can we do better? Where were we wrong, and this and that and kind of caught him -- [laughs] would, you know, had to put up or shut up for this and, and so, we then got into a discussion about the Committee problems, which is his strong suit. And, he quickly sorted it out and said, "Well, I think John Byrnes is the key to this. He's probably not going to run for re-election. He's being very independent with this Congress. Uh, about the only way," he says, "we can work this is for me to talk to him." So, he says, "I'll talk to him over the weekend, and I'll be in touch with you." What we'll build toward, if we can, is a meeting with all the Republicans on the Committee, to just talk out the issues, to talk about the alternatives, weigh them and go into the detail with them, and ask them to spend an afternoon with us. And, uh, then, uh, see at the end of that whether we don't at least have the rest of the Republicans with us, even if we can't get Byrnes. Maybe they can bring him along with the House vote. So, that's kind of our strategy now, on that side. [Unintelligible] these guys to bear on the merits, I think we can solve a lot

PRESIDENT: Yeah. Right.

EHRLICHMAN: of our problems. But it's just --

PRESIDENT: Well, it's basically -- They've been -- On the merits it's really a question of their -- they don't have anything better, but, they therefore are always unsure of being for anything. That's our problem. It's new; it's new, and uh, extremely complicated.

SHULTZ : I would, I would say that Mills' readiness to agree to the sort of thing we talked about is pretty clear indication that he sees

PRESIDENT: Yeah.

SHULTZ: that something has to be done about the area. Because by the time you,

PRESIDENT: Yeah.

SHULTZ: you say all right, we're going to have a statement of purpose, and it's going to be as broad as all outdoors, and he accepts that, well that's, that's just accepting general revenue sharing. Whether the formulations that do more in the direction, of, of need can be worked out satisfactorily I don't know. But, uh, that's the other thing that he, he, uh, talks about.

PRESIDENT: George, can't we make a deal? Uh, the, the main thing is to get it done. And, we have to concede, but we may concede -- don't want to concede too soon, but --

EHRLICHMAN: I've got the medical thing in the next day or two, and like the health thing, and maybe Gerry Ford with him.

PRESIDENT: [Unintelligible] try. Okay.

SHULTZ: I talked to Byrnes about this, as well as Mills. Byrnes is not as, uh, enthusiastic about it as Mills is. Byrnes is just -- He's very difficult to, uh, he's sort of giving him, uh, a compromise that would get him off the hook and he won't take it. He keeps on the tax credit idea.

PRESIDENT: Gee, that's awfully ir--, irresponsible. I mean, uh, well -- and, uh, this, this grave business on the -- It's the principle. If he doesn't want to do it, God damn it, then the second man on the Committee to help him [unintelligible]

EHRLICHMAN: Well, that's it. If he, if he --

PRESIDENT: Who is [unintelligible]? Who's next?

EHRLICHMAN: That's, uh, Betts.

PRESIDENT: Will Betts do it?

EHRLICHMAN: Betts is the guy who's out speaking up and down the land for us. We got him very firmly aboard.

PRESIDENT: [Sighs] Oh, in that case --

BULL: [Unintelligible]

PRESIDENT: How many have you got? About fifteen?

BULL: Uh, the number is, uh, seventeen.

EHRLICHMAN: Seventeen --

PRESIDENT: [Unintelligible] sees them. That's nice. Okay. [Unintelligible]

SHULTZ: Alan Wallace is apparently coming in Sun-- Saturday.

PRESIDENT: Well, they set up, uh -- it seemed at the time, I suppose, a good idea. They set up some sort of a foundation, and, uh, that

SHULTZ: Yeah. I know.

PRESIDENT: teach teachers to teach, to do the two party system. That's a silly damn thing, you know, the two party system, but nevertheless they're all mishatched, and so, I got a great [unintelligible]. They're nice people, and they're all our friends. Bob [unintelligible]. You get that guy fired, George, in San Francisco. Get

him out of there. And by -- I want it all, I want it to ricochet all around the EOB, and I want it to ricochet all around HEW. And let people know that when they don't produce in this Administration, somebody's ass is kicked out. This will be the first person we've fired except Hickel. Now, God damn it, those are the bad guys -- the guys down in the woodwork. We better get one. This guy goes. He's out. Fast.

BULL: Mr. President, Mrs. [unintelligible] will introduce these new people to you. It'll only -- We're going to have a press conference on this, so only four people -- you, and Senator Taft [unintelligible] and Mrs. [unintelligible] will be in the picture. The rest we'll put over there, and [unintelligible] photograph with them afterwards, sir.

PRESIDENT: All right.

BULL: Thank you.

[Several people enter. They exchange greetings with the President.]

14.2 TRANSCRIPT OF APRIL 19, 1971 CONVERSATION

TRANSCRIPT PREPARED BY THE IMPEACHMENT INQUIRY STAFF FOR THE HOUSE JUDICIARY COMMITTEE OF A RECORDING OF A TELEPHONE CONVERSATION BETWEEN THE PRESIDENT AND RICHARD KLEINDIENST ON APRIL 19, 1971, FROM 3:04 TO 3:09 P.M.

PRESIDENT: Dick Kleindienst.

SECRETARY: Thank you, Mr. President.

* * *

PRESIDENT: Yeah.

SECRETARY: Mr. Kleindienst, Mr. President.

KLEINDIENST: Hi, Mr. President.

PRESIDENT: Hi, Dick, how are you?

KLEINDIENST: Good, how are you, sir?

PRESIDENT: Fine, fine. I'm going to talk to John tomorrow about my general attitude on antitrust,

KLEINDIENST: Yes sir.

PRESIDENT: and in the meantime, I know that he has left with you, uh, the IT & T thing because apparently he says he had something to do with them once.

KLEINDIENST: [Laughs] Yeah. Yeah.

PRESIDENT: Well, I have, I have nothing to do with them, and I want something clearly understood, and, if it is not understood, McLaren's ass is to be out within one hour. The IT & T thing -- stay the hell out of it. Is that clear? That's an order.

KLEINDIENST: Well, you mean the order is to --

PRESIDENT: The order is to leave the God damned thing alone. Now, I've said this, Dick, a number of times, and you fellows apparently don't get the me--, the message over there. I do not want McLaren to run around prosecuting people, raising hell about conglomerates, stirring things up at this point. Now you keep him the hell out of that. Is that clear?

KLEINDIENST: Well, Mr. President --

PRESIDENT: Or either he resigns. I'd rather have him out anyway. I don't like the son-of-a-bitch.

KLEINDIENST: The, the question then is --

PRESIDENT: The question is, I know, that the jurisdiction -- I know all the legal things, Dick, you don't have to spell out the legal --

KLEINDIENST: [Unintelligible] the appeal filed.

PRESIDENT: That's right.

KLEINDIENST: That brief has to be filed tomorrow.

PRESIDENT: That's right. Don't file the brief.

KLEINDIENST: Your order is not to file a brief?

PRESIDENT: Your -- my order is to drop the God damn thing. Is that clear?

KLEINDIENST: [Laughs] Yeah, I understand that

PRESIDENT: Okay.

KLEINDIENST: [unintelligible]

[President hangs up.]

15. After the President's telephone call Kleindienst met with McLaren and Solicitor General Erwin Griswold and directed that the Solicitor General apply to the Supreme Court for another extension of time. At 4:30 p.m. Kleindienst telephoned Walsh and informed him that the Solicitor General was arranging for an extension of time for the government to perfect its appeal.

Page

15.1 Richard Kleindienst testimony, 2 KCH 250..... 350

15.2 Richard McLaren testimony, 2 KCH 252..... 351

15.3 Erwin Griswold statement, 2 KCH 242-43..... 352

15.4 Erwin Griswold testimony, 2 KCH 373, 378-80..... 354

15.5 Lawrence Walsh testimony, 3 KCH 1039..... 358

firm in New York, together with a memorandum of law. Both of us at that time remembered that that had a significant part to do with that decision. We were going to confer about it during the recess and then bring it before the attention of the committee that afternoon and then the chariman recessed the hearings until today.

Judge McLaren and I are kind of glad that that occurred, because yesterday we had an opportunity to confer with the Solicitor General and ourselves and we have had an opportunity to refresh our recollection on the circumstances that gave rise to that extension.

At or about April 16, and I think it was on April 16, although it could have been the day before, on April 15—and I have talked to Judge Walsh in New York to likewise refresh my recollection—he called me to ask whether or not he could submit to me a letter and a memorandum of law by which, on behalf of ITT, they would request an extension of time or a delay before we filed our jurisdictional statement. I told him that Judge McLaren was handling the matter.

He said, well, I will send it down to you and address it to you.

He sent it down by a young man in his office and it got to my office around 3 or 4 o'clock in the afternoon on Friday, April 16, by hand delivery.

When the young man came into my office, I placed a call in for Mr. McLaren. He was not there, and Mr. Comegys came up to my office.

I handed the letter dated April 16 and the memorandum of law to me from Judge Walsh and Mr. Comegys took it with him.

I believe that Monday was April 19. Mr. McLaren had—what he did with it, I don't know, and he is prepared to talk about that. But in any event, he called me and said he wanted to talk to me about the Davis, Polk or the Walsh request. He came into my office as we now piece the thing back together again and stated that he did not agree with the position taken by Judge Walsh in the memorandum of law and the letter.

I told him that I didn't have an opinion on it one way or another, but we discussed the fact that inasmuch as the Supreme Court could not hear this case during that term of the court, until there was an opportunity to consider the matter raised by Judge Walsh in his memorandum of law and the matters contained in his letters, there would be no harm in asking for an extension of time.

When we concluded that conversation, we then called the Solicitor, who came down to my office, and we both asked him to go to the Court and seek the extension of time. He was handed or had made available to him the memorandum of law and the letter from Judge Walsh.

I believe that the Solicitor General has prepared a statement that he submitted to the committee, and that statement followed also a conference with Judge McLaren and myself by which the three of us refreshed our recollection.

So, I wanted to start the hearing out this morning with that in the record, because our recollections were not precise when we concluded our testimony on Friday.

In that connection, if the chairman please, Judge McLaren likewise has a statement to make touching upon this.

The CHAIRMAN. He may proceed.

Judge MCLAREN. Thank you, Mr. Chairman.

extensions of time in which to perfect the appeal. Incidentally, such requests are not unusual in complex antitrust cases. My review of the file indicates that the first of these extensions was requested because the Solicitor General had not yet completed his review of my recommendation for appeal. At that point, he was not convinced that he should authorize the appeal.

Sometime after this extension had been attained, he did approve my recommendation, albeit somewhat reluctantly.

There are a number of memorandums which were written during this period dealing with the question of whether or not the Government should appeal. Some of these were prepared in the Antitrust Division and others in the Office of the Solicitor General. I am informed that these memoranda have been produced by the Department to the committee on the understanding that no copies will be made, that the confidentiality of the memorandum will be preserved, and after members of the committee have had an opportunity to review them, they will be returned to the Department. I think it is fair to say that these memos make it abundantly clear that we had anything but an open-and-shut case in *Grinnell*.

The facts surrounding the second extension of time are these, as nearly as I can reconstruct them. On April 16, 1971, one of the firms representing ITT, Davis, Polk and Wardwell of New York, by letter to Mr. Kleindienst, as he has said just a few minutes ago, urged that the Department of Justice not advocate any position on the conglomerate merger issue before the Supreme Court until it had given other interested Government departments an opportunity to comment. Counsel urged that the position which the Department had theretofore taken in challenging the ITT mergers amounted to far-reaching new law and was tantamount to legislation. Accordingly, it was argued by them that before taking a position in the Supreme Court, we should proceed on the same lines as we normally do in seeking new legislation by consulting other interested agencies. Counsel also noted that the additional period of review would not unduly delay a final decision by the Supreme Court and could not adversely affect the public interest.

Mr. Kleindienst forwarded the letter to me and we later discussed it. As I recall, we concluded that the request for additional time as requested in Mr. Walsh's letter was not unreasonable and I at least was very much interested to see what I assumed Mr. Walsh intended to produce from other agencies.

Mr. Kleindienst and I met briefly with the Solicitor General and he was asked to seek a second extension in the *Grinnell* case. The Solicitor General has submitted a memorandum to the committee in this regard and I understand that copies of the Davis, Polk letter also have been furnished to the committee.

I do not believe that any views came in from other agencies. In any event, we went ahead with the appeal. The Solicitor General on May 20 filed the jurisdictional statement which Senator Kennedy asked about at the last hearing.

The third matter which I wish to mention covers the so-called Ramsden report. After ITT's presentation of April 29, 1971, as I testified before, I decided that an independent appraisal of its arguments was necessary, a financial as opposed to an economic review. Mr. Ramsden had done similar consultation work for the Antitrust Division on the LTV case and my staff and I had been well impressed with him in our

Senator HART. You said there were other occasions, in reply to a questions from the chairman, when she denied the money connection.

Dr. LISZKA. Yes.

Senator HART. I am trying to find out when the first denial was made.

Dr. LISZKA. Well, I wouldn't be able to remember whether it was after the conversation or before.

Senator HART. How could it come up before?

Dr. LISZKA. I don't know.

Senator HART. Could it?

Dr. LISZKA. No; I don't think so. As I say, I don't remember.

The CHAIRMAN. I have a letter from Erwin Griswold, Solicitor General of the United Unites. [Reading].

. DEAR SENATOR EASTLAND: A representative of Senator Kennedy's office has asked me to make a statement with respect to the request for an extension of time in April 1971, in the case of *United States* v. *International Telephone & Telegraph Co.*, involving the divestiture of Grinnell Corp.

I have prepared the statement requested and am sending it to you herewith. Copies are also included so that they may be available to all the members of the committee.

A copy of the statement is being sent direct to Senator Kennedy.

That letter will go into the record and also a copy of the memorandum, which I haven't read.

Senator KENNEDY. I think we ought to read his whole statement.

The CHAIRMAN. Well, go ahead and read it.

Senator KENNEDY. You can read it.

The CHAIRMAN. You make me work for a living. [Reading].

I have been asked to make a statement with respect to the filing of the Jurisdictional Statement in the case of *United States* v. *International Telephone and Telegraph Co.*, involving divestiture of the Grinnell Corporation. This was No. 1718, October Term, 1970, in the Supreme Court, and became No. 70–177, October Term, 1971.

On the afternoon of April 19, 1971 (it may have been April 18, 1971, but I believe it was April 19), my secretary told me that the Deputy Attorney General wanted me to come to his office. I went there, and found Assistant Attorney General McLaren with the Deputy Attorney General.

The Deputy Attorney General asked me what the time situation was with the I.T.T. case. I replied that we were awaiting the final print of the Jurisdictional Statement from the Government Printing Office, and that April 20 was the final day for filing. He asked me if there was any way that we could get more time. I replied that that might be possible, but I added that we were supposed to ask for extensions at least ten days in advance. I said that we very rarely failed to comply with the ten-day rule, and that I thought we stood a good chance to get the extension in this case, particularly if we had a good reason. He asked me to try to get the extension.

During the discussion it was stated (I do not recall whether this was by the Deputy Attorney General or by Mr. McLaren) that a letter had been received from Lawrence E. Walsh, of the Davis Polk firm in New York, requesting the government reexamine the question whether conglomerate mergers should be reviewed by litigation or through requests for further legislation. I did not see Mr. Walsh's letter, but I recall that reference was made to the fact that he said that other officers or agencies of the government had views on this question which should be considered.

Following the discussion in the Deputy Attorney General's Office, I went back to my office and asked my Deputy, Mr. Friedman, to prepare an application for extension of time in the *Grinnell* case. I gave him a verbal summary of the discussion in the Deputy Attorney General's Office. Mr. Friedman wrote the application for extension of time, but I read it and approved it. It was in accord with my understanding of the facts at the time.

The CHAIRMAN. It will be admitted into the record.

(The material referred to follows:)

OFFICE OF THE SOLICITOR GENERAL,
Washington, D.C., March 6, 1972.

Re: Nomination of Richard G. Kleindienst

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND, A representative of Senator Kennedy's office has asked me to make a statement with respect to the request for an extension of time in April, 1971, in the case of *United States* v. *International Telephone and Telegraph Co.*, involving divestiture of the Grinnell Corporation.

I have prepared the statement requested, and am sending it to you herewith. Copies are also enclosed so that they may be available to all the members of the Committee.

A copy of the statement is being sent direct to Senator Kennedy.

Very truly yours,

ERWIN N. GRISWOLD,
Solicitor General.

STATEMENT BY ERWIN N. GRISWOLD

I have been asked to make a statement with respect to the filing of the Jurisdictional Statement in the case of *United States* v. *International Telephone and Telegraph Co.*, involving divestiture of the Grinnell Corporation. This was No. 1718, October Term, 1970, in the Supreme Court, and became No. 70–177, October Term, 1971.

On the afternoon of April 19, 1971 (it may have been April 18, 1971, but I believe it was April 19), my secretary told me that the Deputy Attorney General wanted me to come to his office. I went there, and found Assistant Attorney General McLaren with the Deputy Attorney General.

The Deputy Attorney General asked me what the time situation was with the I.T.T. case. I replied that we were awaiting the final print of the Jurisdictional Statement from the Government Printing Office, and that April 20 was the final day for filing. He asked me if there was any way that we could get more time. I replied that that might be possible, but I added that we were supposed to ask for extensions at least ten days in advance. I said that we very rarely failed to comply with the ten day rule, and that I thought we stood a good chance to get the extension in this case, particularly if we had a good reason. He asked me to try to get the extension.

During the discussion it was stated (I do not recall whether this was by the Deputy Attorney General or by Mr. McLaren) that a letter had been received from Lawrence E. Walsh, of the Davis Polk firm in New York, requesting that the government reexamine the question whether conglomerate mergers should be reviewed by litigation or through requests for further legislation. I did not see Mr. Walsh's letter, but I recall that reference was made to the fact that he said that other officers or agencies of the government had views on this question which should be considered.

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ERWIN N. GRISWOLD

Senator KENNEDY. Just to get this straight, Doctor, as I understand the column, Mr. Anderson's column says that Mrs. Beard met Mitchell in Kentucky and discussed the ITT antitrust case with her, and you confirm that, do you not?

Dr. LISZKA. Well, yes, I assume we agree on that.

Senator KENNEDY. It says she was dressed down by Mr. Mitchell for the way she had been handling the ITT antitrust case, and you confirm that?

Dr. LISZKA. Yes, that is substantially what I said.

Senator KENNEDY. Now, as I understand, the column doesn't say anything about any discussion in Kentucky about San Diego so there is nothing to confirm about that.

that situation and deal with it and the anticompetitive results that those conglomerate mergers bring about. And we can do it under the present statute.

I believe that in all fairness to Judge McLaren that the second position was the one that he held. Am I correct?

Mr. GRISWOLD. I understand that that was the one that he held—I think I should say that I know that was the one he held, because we discussed this at considerable length. And my own view was that he was at least entitled to find out, and that if we needed additional legislation, the chances of getting it would be improved if we took the case to the Supreme Court and lost.

On the other hand, if we took the case to the Supreme Court and won, then it would be less necessary for us to seek additional legislation.

Senator HRUSKA. Did you have conferences with Mr. McLaren and Mr. Kleindienst in connection with the *Grinnell* case and the authority that you did grant for the appeal thereof?

Mr. GRISWOLD. Senator, I had conferences with Mr. McLaren and members of his staff in connection with my authorization of the appeal. I had no conference with Mr. Kleindienst at that time. I did have a conference, or I did have a meeting at which Mr. Kleindienst and Mr. McLaren were present—as I indicated in the statement I filed here on Monday—that was on April 19, 1971, which was close to 3 weeks after I had authorized the appeal in the *Grinnell* case.

Senator HRUSKA. Now, in the first conference to which you referred, the one with Mr. McLaren and his staff, did he make clear to you the general pattern that he hoped to be able to develop; to wit, that there conceivably could be an appeal to the Supreme Court which would be based upon a joint consideration of the *Grinnell* case, the *Canteen* case, and later on the *Hartford Fire* case?

Mr. GRISWOLD. That was talked about, Senator, as I recall it. And it was quite apparent to our minds that the *Canteen* case could in all likelihood be brought up so that it could be heard at about the same time as the *Grinnell* case. I think we all recognized that it was extremely unlikely that we would get the *Hartford* case there at the same time, because it had not yet been tried in the district court, as I recall it. And I think it was mentioned several times, oh, if we could only get all three of these cases up at once, our chance would be much better. But we saw no way to do that.

Senator HRUSKA. Because of the potential length of the trial of the *Hartford* case?

Mr. GRISWOLD. The *Hartford* trial, as I recall it, wasn't scheduled to begin until September. And antitrust trials are usually and inevitably quite long drawn out. It seemed unlikely that there would be a District Court decision before, let's say, June of the following year, and we had to get to the Supreme Court after that.

And we couldn't keep *Grinnell* and *Canteen* pending to await *Hartford* coming along.

Senator HRUSKA. Are you familiar with the general content of the consent decrees that were entered into?

Mr. GRISWOLD. Senator, only in a general way. I do not know that I have ever seen the entire consent decree. I have seen and read and considered and approved that part that related to *Grinnell*. What I know about the whole arrangement has come from the newspapers

Mr. GRISWOLD. Yes, Senator, I have read it within the last few days.

Senator KENNEDY. Did you read the Walsh letter on April 19, or prior to that time?

Mr. GRISWOLD. No, to the best of my recollection, I did not see it on April 19. It either was read from or it was summarized in the meeting that I had on April 19. But it was not shown to me, and I did not read it. I did not know then, for example, that there was a memorandum attached to it, which I have now seen

Senator KENNEDY. Were you otherwise aware that ITT no longer was arguing to the Department that the Department was wrong in the law, as suggested in the Walsh memorandum?

Mr. GRISWOLD. I am sorry, Senator, I didn't understand.

Senator KENNEDY. Were you aware that in the Walsh letter that Mr. Walsh had mentioned to Mr. Kleindienst:

> Looking back at the results of government antitrust cases in the Supreme Court, one must realize that if the government urges an expanded interpretation of the vague language of the Clayton Act, there is a high probability that it will succeed. Indeed, the court has at times adopted a position more extreme than that urged by the Department.

Did anyone read that particular excerpt?

Mr. GRISWOLD. To the best of my recollection, Senator, I did not then know that that was in the letter. As I have said, I didn't see the letter. And I don't think that was either read or referred to at the meeting I attended.

Senator KENNEDY. Were you otherwise aware of that view expressed by Mr. Walsh?

Mr. GRISWOLD. No. And it is a view with which, as I have indicated, I would disagree.

Senator KENNEDY. Your memo says, you were told the Walsh letter raised the question whether new legislation should be obtained. Reading page 2 of your memorandum, paragraph 2:

> During the discussion it was stated . . . that a letter had been received from Lawrence E. Walsh, of the Davis Polk firm in New York, requesting that the Government reexamine the question whether conglomerate mergers should be reviewed by litigation or through requests for further legislation.

You have now read the Walsh letter, as I understand it? You said you had?

Mr. GRISWOLD. Yes, I have.

Senator KENNEDY. Do you agree with me that there is no reference in there to seeking new legislation?

Mr. GRISWOLD. I would have to get it out again. But as I recall it, the burden of the letter was that it should be determined, if there was to be a change in the application of section 7 of the Clayton Act, it should be considered at the highest level of the Government, whether this should be done through court decision, or through legislation.

Senator KENNEDY. Can you remember what representations were made to you that would have supported the view that you expressed in this second paragraph on page 2, your own memorandum?

Mr. GRISWOLD. I don't think I can say more than I have said, that it was suggested that we should take more time to consider whether we should even seek to proceed through further litigation. And if through that consideration it was decided not to proceed through litigation, that would involve of course, dismissing or, not perfecting,

the *Grinnell* appeal. And in order to allow consideration of that question, I was asked to seek an extension of time, which I did.

Senator KENNEDY. I am not really sure that is what the Walsh letter suggested.

Mr. GRISWOLD. Senator, I didn't see the Walsh letter at that time. I don't know what was in it—I did not then know what was in it. I did know that there was a suggestion from Mr. Walsh that we should not proceed at once, but should give consideration in consultation with other agencies of the Government to the question whether we should proceed by litigation. I think I drew the inference that if there was to be proceeding on the issue, not by litigation, it would have to be by seeking legislation. But the immediate issue before me was whether we should seek an extension of time with respect to the pending litigation.

Senator KENNEDY. Of course, hadn't that decision to move ahead with the litigation already been made by the Antitrust Division a long time ago?

Mr. GRISWOLD. The decision to appeal had been made by me. It could be changed. I am a fairly firm person. But in the years I have been Solicitor General I have changed my mind a number of times. I have let other people convince me that I was wrong, and have acted accordingly. And in this case the delay through seeking extension of time had no effect whatever on when the case would be heard in the Supreme court. It wasn't going to be heard until the fall of 1971 anyhow. And seeking an extension of time for further consideration seemed to me to be only the sensible way to handle the situation where a request was made that we give further consideration.

Senator KENNEDY. Is it still your position that the Department should not ask for extensions after the normal time—I believe it was 9 days late, in this case—unless there is good reason?

Mr. GRISWOLD. It does not ordinarily, Senator. I think I said there that we didn't usually. I made a check this afternoon, and it is not complete. But over a period of about 15 months I have found five cases where we applied for extensions of time within the 10-day period, including one of which, after we applied for the extension of time, we didn't file the paper on, because on giving it further consideration, we decided not to do it.

Senator KENNEDY. And that is out of how many cases?

Mr. GRISWOLD. It is hard for me to say. Perhaps a hundred.

Senator KENNEDY. Wouldn't you agree with me, then, it isn't the usual procedure?

Mr. GRISWOLD. Oh, yes, there is no doubt that it is unusual.

Senator KENNEDY. If you had shared the view of Mr. McLaren or Mr. Mitchell or Mr. Kleindienst, and Mr. Walsh, on the willingness of the Supreme Court to rule against the conglomerate mergers, wouldn't your view on the settlement be different?

Mr. GRISWOLD. I have never heard Mr. Mitchell express any view on this whatever. I don't believe I have ever heard Mr. Kleindienst express any view on the substance of this question. I have talked extensively with Mr. McLaren about it. Mr. McLaren had a dogged determination to go ahead, and an engaging optimism about it. I found no reason to stop him from going ahead. But I didn't share his optimism.

Senator KENNEDY. Now, at some time you had a call from either Mr. McLaren or Mr. Walsh about the 18th, that is right, April 18?

Mr. GRISWOLD. No, I never had a call from either. I understand now that the 18th was a Sunday, so this must have been on the 19th.

Senator KENNEDY. And your secretary told you that the Deputy Attorney General wanted you down in his office?

Mr. GRISWOLD. That is right.

Senator KENNEDY. Could you tell us about that meeting?

Mr. GRISWOLD. I think I have summarized it quite completely in the statement I have already filed.

Senator KENNEDY. There was no one else there?

Mr. GRISWOLD. No one else was there. It didn't last more than 5 minutes, perhaps less.

Senator KENNEDY. And as I understand from your memorandum—could you repeat for us what you believe to be the reasons for seeking the delay in the filing of the jurisdictional statement?

Mr. GRISWOLD. The basic reason was that the Deputy Attorney General wanted it. And I understood the underlying reason was, the letter which he had received from Mr. Walsh which requested it, which was summarized, but which letter I didn't see—I didn't ask to see, it wasn't withheld from me—it was simply, as I recall it, it was on the desk or the side, in front or beside the Deputy Attorney General as he was talking to me, and he pointed to it—but the substance was that there were some matters here which ought to receive further consideration.

Senator KENNEDY. There is nothing further that you can add about that conversation?

Mr. GRISWOLD. No.

Senator KENNEDY. He just said that there are other matters that have been included in this letter that deserve further consideration?

Mr. GRISWOLD. No; as I understand it, it was matters relating to whether we should proceed by litigation on conglomerate mergers.

Senator KENNEDY. The materials we received from the Department show the Solicitor General's memorandum up to March 26, 1971. Can you give us any idea what, if anything, happened between March 26 and April 19?

Mr. GRISWOLD. The jurisdictional—let me start over again, Senator. We had probably 30 or 40 other cases in my office moving through during that time. Once the appeal was authorized, word would be sent to the Antitrust Division, and they would be requested to make a draft of the jurisdictional statement. The jurisdictional statement would be prepared, it would come to my office, and it would be worked over in detail by one of my younger staff members, and then reviewed thoroughly and carefully by my senior staff member, and then would come to me, and then would go to the printer.

And as I recall it, it went to the printer on Thursday or Friday before April 19, and was due back on the afternoon of April 19 in printed form.

Senator KENNEDY. You have supplied materials, or the Department has, a series of memoranda, the following documents—you are familiar with those items here? Are you familiar with the letter from Mr. Wilson that was sent to the committee?

Mr. GRISWOLD. I don't know what you are referring to, Senator.

I don't have—I really have no perfect recollection of this now but my impression is that the contents of my letter are probably pretty much what I told him over the phone.

He said that —you know—he indicated that probably it should be for Mr. McLaren and that he also indicated that he was quite sure that Mr. Mitchell would not want to be concerned with this matter, but to send it down and in a sense he would figure out what to do with it when he got it.

So Mr. Struve did take it down to him, delivered it by 3 o'clock on April 16. He went in to Mr. Kleindienst's office with it and Mr. Kleindienst sent for Mr. Comegys, who was the first assistant in the Antitrust Division, and turned it over to him. I believe Mr. McLaren was probably out of town but I am not sure.

Mr. Struve—I told Mr. Kleindienst that Mr. Struve was authorized to answer any questions that either he had or anybody in the Antitrust Division might have with respect to the memorandum, but neither of them chose to ask him any; and I think Mr. Comegys indicated he didn't think it was necessary and Mr. Struve came back.

The next I heard was Mr. Kleindienst called me early in the morning on April 19. I was not in the office. On April 19 and 20——

Senator KENNEDY. Could I just interrupt you?

Mr. WALSH. Yes.

Senator KENNEDY. Before you leave the 16th——

Mr. WALSH. Yes, sir.

Senator KENNEDY. How many conversations did you have with Mr. Kleindienst on the 16th?

Mr. WALSH. I had two, but I believe only one related to ITT. I have a feeling the first one related to probably a judiciary matter.

The first conversation was 4 minutes long; the second one was 2 minutes or less, and I believe that it would have been at the end of that 4 minute conversation I told him that I might call him on this but I have no recollection of that. I believe it was a 2 minute conversation that concerns ITT.

On the following Monday, the 19th and the 20th, I stayed away from the office to get ready for an argument on an altogether different case which I had to make on April 21, so I stayed home and I called in around 10:30 in the morning and found that Mr. Kleindienst had called me earlier that morning and I called him back at that time and apparently got him in the middle of a meeting, and the essence of what he said was that they had—he had considered the memorandum and had had a meeting with respect to it but he did not tell me who; he told me he thought the answer was going to be no, but he couldn't talk to me but he would call me later. I told my secretary when he called to let me know the next time.

So he called in again about 4:30 that afternoon and at that time said that he had talked with the Solicitor General and the Solicitor General had arranged with Covington and Burling for a 30 day extension of the filing of the jurisdictional statement in the *Grinnell* case. Again, he didn't have time to discuss the matter at length then, that he would again talk with me about it when he had a chance.

I told Mr. Aibel on each occasion what Mr. Kleindienst had told me. I knew by that time—Mr. Aibel and I both knew at that time that

16. On Tuesday, April 20, 1971, on the motion of Solicitor General Griswold, the time for the government to perfect its appeal in ITT-Grinnell by filing its jurisdictional statement was extended from April 20, 1971 to May 20, 1971.

Page

16.1 United States v. International Telephone and Telegraph Corporation, Application for Extension of Time filed by the Solicitor General and Order of the United States Supreme Court, April 20, 1971, with letter from the Deputy Clerk of the Supreme Court to Solicitor General Erwin Griswold (received from Department of Justice)..... 360

16.2 United States v. International Telephone and Telegraph Corporation, Supreme Court Docket, April 19-20, 1971..... 365

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

APPLICATION FOR FURTHER EXTENSION OF TIME FOR DOCKETING CASE ON APPEAL

The Solicitor General, on behalf of the United States, applies for a further extension of 30 days, to and including May 20, 1971, within which to docket the government's direct appeal from the judgment of the United States District Court for the District of Connecticut. On March 20, 1971, Mr. Justice Harlan extended the time for docketing the appeal, which originally expired on March 31, 1971, to and including April 20, 1971.

As explained in the previous application for an extension, this case involves the legality, under Section 7 of the Clayton Act, of the acquisition of the Grinnell Corporation by the International Telephone and Telegraph Corporation. After a lengthy trial, the district court rejected the government's contentions that Grinnell is a dominant firm in sprinkler device manufacture and sprinkler system installation, that those lines of commerce are concentrated, and that the acquisition would further entrench Grinnell's position because of various advantages it would gain as a result of ITT's vast resources and interests.

The additional time is needed for further study of the case and to permit consultation among various interested government agencies with

regard to whether the government should perfect its appeal.

Counsel for the appellee (Henry P. Sailer) has consented to this extension.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1971.

Retyped from indistinct original

SUPREME COURT OF THE UNITED STATES

No. ---------, October Term, 1970

UNITED STATES,

Appellant,

vs.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

O R D E R

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, further extended to and including May 20th, 1971.

J. M. Harlan
Associate Justice of the Supreme Court of the United States.

Dated this 20th day of April, 1971.

Retyped from indistinct original

Supreme Court of the United States

No. ----------, October Term, 19 70

UNITED STATES,

Appellant,

vs.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION

O R D E R

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, further extended to and including May 20th, 1971.

J. M. Harlan
Associate Justice of the Supreme Court of the United States.

Dated this 20th day of April, 1971.

16.1 DEPUTY CLERK OF SUPREME COURT LETTER, APRIL 21, 1971

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

E. ROBERT SEAVER
CLERK OF THE COURT

April 21, 1971

The Honorable Erwin N. Griswold
Solicitor General of the U.S.
Department of Justice
Washington, D.C. 20530

Re: U.S. v. International Telephone and Telegraph Corp., October Term, 1970

My dear Mr. Griswold:

Your application for a further extension of time in which to docket an appeal in the above-entitled case was presented to Mr. Justice Harlan, who signed the order extending your time to and including May 20, 1971.

A copy of the Justice's order is enclosed.

Very truly yours,

E. ROBERT SEAVER, Clerk

By

Michael Rodak, Jr.
Deputy Clerk

iaw
Encl.

cc: Henry P. Sailer, Esq.

70-177

Title

United States, Appellant,
v.
International Telephone and Telegraph Corporation

Court	FILING DATE	TERM AND DOCKET NO.
United States District Court for the District of Connecticut	May 17, 1971	A-70 1718

DATE	PROCEEDINGS AND ORDERS
	Counsel for appellant: Attorney General
	Counsel for appellee: Henry P. Sailer
Mar. 19, 1971	Applic. for ext. of time to docket appeal filed
Mar. 20, 1971	Orderextending time to docket appeal. (Harlan, J., until 4-20-71)
Apr. 19, 1971	Application for further extension.
Apr. 20, 1971	Order further extending time to docket appeal until 5-20-71 by Harlan, J.,)
May 17, 1971	Statement as to jurisdiction and record filed.
Jun. 14, 1971	Order extending time to file response until July 17th.
Jul. 12, 1971	Order further extending time to file appellee's motion to affirm until August 16, 1971.
Jul. 29, 1971	Order further extending time to file motion to affirm until Sept. 1.
Aug. 20, 1971	Agreement to dismiss appeal filed.
Aug. 23, 1971	Appeal dismissed under Rule 60.

17. Also on April 20, 1971 Felix Rohatyn, an investment banker who was a director of ITT, met with Kleindienst to discuss the economic and financial ramifications of divestiture of the Hartford Fire Insurance Company by ITT. At the meeting Rohatyn asked to present these arguments to McLaren, and such a presentation was later arranged for April 29.

Page

17.1 Richard Kleindienst testimony, 2 KCH 96-97..... 368

17.2 Felix Rohatyn testimony, 2 KCH 114..... 370

The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the settlement of Government antitrust litigation for partisan political reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate, I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

I am here this morning with respect to the matters involving the ITT Co. and its antitrust matters before the Department of Justice to tell you what I did. And I have here with me this morning Judge McLaren, the Federal District Judge of the Northern District of Illinois, and Mr. Felix Rohatyn, a member of the board of directors of ITT, being the two persons with whom I had any dealings in connection with these matters to also have them tell you what they did. And to the extent that it involves me, to have them tell you what I did.

I was involved in any way with respect to these antitrust matters by virtue of the fact that the Attorney General, in 1969, disqualified himself from the consideration of any matters involving the I.T. & T. Corp. The reason why he disqualified himself is that his former law firm has performed legal services, I believe, for subsidiaries of I.T. & T. and, therefore, felt from the standpoint of proper conduct that he should not become involved in any matter or consideration or decision that would involve these companies.

In 1969, at the recommendation of then Assistant Attorney General McLaren in the Antitrust Division I signed as the Attorney General in these cases, and as required by law, the complaints or authorized the filing of complaints against the acquisition or proposed acquisition by I.T. & T. in connection with three corporations, the Canteen Corp., the Grinnell Corp., and the Hartford Corp. Those complaints and the nature of those actions will be discussed in more detail, I believe, by Judge McLaren this morning.

But, in any event, all three of those complaints, seeking on behalf of the Government to prevent their acquisition by I.T. & T. were filed in the year 1969 by the Department of Justice.

I really had very little to do or relationship with or knowledge about the ordinary process of those cases in the year 1969. Indeed, I have no recollection of having any meetings other than routine, or of a very nominal nature in that year with respect to any one of those cases.

Approximately April 20, 1969, I received a call from Mr. Felix Rohatyn, who is sitting here to my left, in which he identified himself to me as a member of the board of directors of I.T. & T., and he stated that he was not a lawyer and that he would like to come to my office to discuss some of the economic consequences of the policy of the Department of Justice to require by I.T. & T. a divestiture of the Hartford Insurance Co. As a result of our discussion on the telephone Mr. Rohatyn came to my office on April 20, 1969. He again opened up the conversation, and incidentally, only Mr. Rohatyn and I were

present at that conversation. And I believe for the record that at any time that I had any meeting with Mr. Rohatyn only he and I were present during those meetings.

He again prefaced his remarks by telling me who he was, his position with the company, that he was not a lawyer, that he was a financier and an economist. He also, I think, by way of introduction, stated that he had no political credentials by which to introduce himself to me. That as a matter of fact, he was an economic adviser to Senator Muskie in his national campaign, and was on his finance committee. He then said that in substance, he was not there to make any legal arguments, and that for the purpose of our discussion he would assume—he did not concede it, but that we could assume that the Department of Justice would be successful in its prosecution of all three of these cases. The record up to that time had not shown great success by the Department of Justice, but he said, let us assume that ultimately you are going to prevail in all of these cases, and that the reason that he wanted to talk to me was not that we were going to succeed, but what would happen if we did, because he came there to tell me the rather drastic economic consequences that would accrue to I.T. & T. and Hartford if I.T. & T. was required to divest that company. He said that among other things, the stockholders of both companies would suffer a loss in excess of $1 billion in the value of their stock. He indicated to me that as a result of the manner in which they acquired the company and the tax consequences of the divestiture that I.T. & T. would have to pay out $400 or $500 million, and that that would have a very drastic effect upon the liquidity of their company. He indicated to me that a lack of liquidity would interfere with their ability to perform some $200 million or $300 million of contracts abroad, that would have a certain effect on our balance of payments.

Incidentally, I have been reminded that this meeting on April 20 occurred in 1971 and not 1969. That was an oversight on my part.

That that would interfere with our balance of payments abroad, and deprive an American company of an ability to compete favorably overseas in a particular market. And then I think he terminated his remarks by saying also if they accrued—these consequences to I.T. & T.—taking into account the condition of the economy at that time, that it might have additional repercussions so far as the general stock market was concerned.

He then asked me if I would direct Mr. McLaren, the Assistant Attorney General in the Antitrust Division, to call a meeting of his staff, and any other experts that the Government might want to have with them, and economic experts of the I.T. & T. Corp. for the purpose of permitting I.T. & T. to make this economic presentation to the Government, not a legal argument whether or not as a matter of law the position of the Department was meritorious, but in order for the Government to be able to have this information, and hopefully arrive at some kind of a settlement in these cases calculated to permit I.T. & T. to retain the Hartford Insurance Company and not be required to divest it.

I told Mr. Rohatyn that I would not direct Mr. McLaren or Judge McLaren to do that, but that I would call him and see if he would be willing to do that. I did. Mr. Rohatyn left. I did. And then I called Mr. Rohatyn and said that Mr. McLaren would be willing to have such a meeting.

I have with me copies of the three decrees that were entered against ITT, pursuant to our settlement. Essentially, they require three things: (1) a divestiture of firms with approximately $1 billion of sales—which is one of the biggest, if not the biggest, divestiture in antitrust history; (2) a prohibition against further acquisitions by ITT which might have anticompetitive effects, and (3) a prohibition against use of systematic reciprocity by any of the ITT companies. I am responsible for that settlement and I stand fully behind it. In my professional opinion, it is an excellent settlement from the Government's standpoint not only as a matter of disposition of this litigation but for its overall impact in promoting compliance with the antitrust laws in deterring anticompetitive mergers.

The CHAIRMAN. Mr. Rohatyn.

Mr. ROHATYN. Mr. Chairman, I thank you for the opportunity to appear in front of you and your Committee.

My name is Felix G. Rohatyn. For the past 12 years I have been a general partner in the investment banking firm of Lazard Freres & Co., and since 1968 have been a director of International Telephone and Telegraph Corp.

I am open to the committee's questions concerning my role in the settlement of antitrust litigation brought by the Justice Department against ITT, but would like to begin by describing the nature of discussions in which I participated with Justice Department officials.

It had been our belief that a forced divestiture of Hartford Fire could raise fundamental issues of national policy——

Senator HART. Mr. Chairman, I wonder if the witness could proceed more slowly. We do not have a copy of his statement.

Mr. ROHATYN. I am sorry, Senator Hart.

The CHAIRMAN. Do you have extra copies of your statement?

Mr. ROHATYN. Yes, sir. I can get them for you right now, sir, if you like.

The CHAIRMAN. Let us have order. Proceed, sir.

Mr. ROHATYN. It had been our belief that a forced divestiture of Hartford Fire could raise fundamental issues of national policy transcending both the narrow scope of traditional antitrust philosophy and the narrow interest of ITT. Several points were involved, including possible United States balance of payments effects and government policy toward preserving the underlying strength of domestic companies competing overseas. In addition, as chairman of the New York Stock Exchange Surveillance Committee during that period of financial crisis, I was concerned that so massive a divestiture might unsettle our securities markets, and with possible impact on some financial organizations.

Early in April of 1971, I was asked by Mr. Harold Geneen and by our counsel to prepare a comprehensive treatment of these issues for presentation at the Department of Justice. I was thought qualified in these areas as an economic and financial specialist. Since the policy considerations to be raised ranged beyond antitrust enforcement policy, and because Attorney General Mitchell had disqualified himself, I met first with Deputy Attorney General Richard Kleindienst, to outline our thinking in general terms. On April 20, 1971, Mr. Kleindienst directed that a full presentation be made to Mr. McLaren.

18. On April 21, 1971 the President met with Attorney General Mitchell and discussed, among other things, the ITT-Grinnell appeal. The President said that he did not care about the merits of the case but that the business community believed that the Administration was being even rougher on it in antitrust matters than had previous administrations. Mitchell argued that it was a political mistake to interfere with the appeal. The President agreed to heed Mitchell's advice to permit the appeal to be perfected.

Page

18.1 Tape recording of the end of a meeting between the President and John Mitchell, April 21, 1971, 4:18 - 6:13 p.m., and House Judiciary Committee transcript thereof 372

18.1 TRANSCRIPT OF APRIL 21, 1971 MEETING

TRANSCRIPT PREPARED BY THE IMPEACHMENT INQUIRY STAFF FOR THE HOUSE JUDICIARY COMMITTEE OF A RECORDING OF THE END OF A MEETING BETWEEN THE PRESIDENT AND JOHN MITCHELL ON APRIL 21, 1971, FROM 4:18 TO 6:13 P.M.

MITCHELL: I would like to get some time to talk to you, Mr. President, about this antitrust business, because this is political dynamite.

PRESIDENT: McLaren? Uh --

MITCHELL: I'm talking about the whole picture of, of, of this ITT, uh, what can develop out of this, Senate investigation and so forth, if you don't need it. You don't need it for these bastards up there to burden us with it. I don't know who's been giving you the information, but it's a bad political mistake. I'm not talking about the merits of it.

PRESIDENT: John, the problem we've got is this, that we've got a, uh, that, uh -- I don't give a damn about the merits either, uh, but we have a situation where, uh, and, uh, Connally has spoken to me about it -- but, uh, where the business community, for, for -- believes that we're a hell of a lot rougher on them in the antitrust than our predecessors were.

MITCHELL: All right. Now, let me --

PRESIDENT: And they don't think you are, they think McLaren is,

MITCHELL: Well, there, there are reasons for it.

PRESIDENT: because he leads you to believe this.

MITCHELL: And it wasn't McLaren, you know, that started all this. It was your Council of Economic Advisors and Arthur Burns, and it was done in order to help cool this economy and the stock market and I could go on to a lot of other things. And, uh, the things that they're accusing McLaren of are just, uh, uh, made out of whole cloth. It's just not true. There are antitrust cases here, but what I want to talk about is the political aspects of it. And if, uh, if this thing should be turned off, it, I mean the general concept of it, you've got a review going now -- inter-governmental -- well, it's time to do it. But you just can't stop this thing up at the Supreme Court, because you will have Griswold quit, you will have a Senate investigation -- Hart will just love this -- and we don't need it. There are other ways of working this out.

PRESIDENT: Okay. You --

MITCHELL: But I'm -- I want to ta--, I want to --

PRESIDENT: Well, go ahead, you could -- Yeah, I understand that. If that's the problem politically, go ahead. The only thing that I

want to say

MITCHELL: [Unintelligible]

PRESIDENT: is that I do feel that we, that we've got to sit down and, and, so that -- It seems to me that you've got to get Connally, uh--Stans, Stans also wrote,

MITCHELL: Yeah, I know. I know.

PRESIDENT: he wrote this damn long memorandum to me.

MITCHELL: I know.

PRESIDENT: Well, if you'll just sit down and convince them, I don't want to hear anything more about it.

MITCHELL: All right.

PRESIDENT: That's all.

MITCHELL: Now we have a inter-governmental study going on

PRESIDENT: I know about that.

MITCHELL: the antitrust policies, and this, this is fine, but you don't just cut this thing off at the top, and then get up before that Hart Committee up there and get yourself chewed to pieces.

PRESIDENT: All right, fine.

MITCHELL: And --

PRESIDENT: You handle it. But if you could -- Would you do this,

MITCHELL: Yeah.

PRESIDENT: without my being present? Get Connally

MITCHELL: Yes.

PRESIDENT: and Stans

MITCHELL: Those

PRESIDENT: [Unintelligible]

MITCHELL: are the two where we'll --

PRESIDENT: and tell 'em [unintelligible] another one, now McCracken's been, uh, [unintelligible] raised it, saying that he's catching hell on it.

MITCHELL: McCracken, for Christ's sakes, he was the one that basically started this.

PRESIDENT: Uh, he says, it makes it [unintelligible] the business community feels you ought to go to New York and resolve the antitrust.

MITCHELL: Yeah. Now, well, what we ought to do is change the policy and

PRESIDENT: Yeah.

MITCHELL: not -- and we can get rid of this ITT thing, I think.

PRESIDENT: I don't care about the ITT.

MITHCELL: All right.

PRESIDENT: I don't even know what it is.

MITCHELL: Now the other thing I would like -- John Ehrlichman called today, and said that they put out this network suit. And I don't --

19. During the last ten days of April 1971 Geneen and Merriam of ITT wrote four letters to Administration officials -- one to Secretary of the Treasury John Connally and three to Peter Peterson -- containing references to antitrust matters. Two of the letters commented favorably on the ITT-Grinnell appeal delay.

Page

19.1 Memorandum from William Merriam to Peter Peterson, April 22, 1971, with attached letter from Harold Geneen to Peter Peterson, April 22, 1971 (received from Peter Peterson)..... 378

19.2 Letter from William Merriam to John Connally, April 22, 1971 (received from White House)..... 386

19.3 Memorandum from Peter Peterson to John Ehrlichman Dick [sic] Krogh, April 27, 1971, with attached letter from William Merriam to Peter Peterson, April 26, 1971 (received from White House)..... 388

19.4 Memorandum from Peter Peterson to John Ehrlichman and Dick [sic] Krogh, May 3, 1971, with attached letter from William Merriam to Peter Peterson, April 30, 1971 (received from White House..... 391

TO:

Pete:

I am attaching a letter, a list of names which you requested, and a memorandum drafted by Hal, the subject of which concerns our discussion with your last Friday.

We have no objection to your forwarding this memorandum either as an ITT document, or as one with no sponsorship to Arthur Burns, Secretary Connally, or anyone else you think should receive it.

I will be glad to carry out the mechanics, noting in a cover memorandum that it has been done at your suggestion. I will call your secretary, Miss McAuliffe, tomorrow to determine your wishes.

Best regards, Bill

4/22/71

W. R. MERRIAM
ITT Washington Relations

19.1 HAROLD GENEEN LETTER, APRIL 22, 1971 WITH ATTACHMENTS

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION
320 PARK AVENUE
NEW YORK, N Y 10022

HAROLD S GENEEN
CHAIRMAN AND PRESIDENT

April 22, 1971

The Honorable
Peter G. Peterson
Assistant to the President for
International Economic Affairs
Old Executive Building
Washington, D. C. 20500

Dear Pete:

Your time and discussion last week were very much appreciated. Your program would appear to be the first broad constructive approach to the mounting problems of our balance of payments, trade, and overall international position, many factors of which will have direct effect on our economy at home.

I understand that this assignment is new, but let me say it has been urgently needed for a long time.

You have asked if I could suggest some names to work as Committeemen on a fairly intensive basis through a three-month period in the four areas of:

1) Industrial Technology

2) Raw Materials and Clean Energy Source

3) Business - Government Relations, and

4) Productivity

I have attached a list of names for this purpose with some very brief notations.

The Honorable
Peter G. Peterson
Page 2

In addition, if I may, I would like to offer to serve on any of your Committees. I will do my best on time realizing other commitments. The Business - Government Relations and Productivity is where in my opinion the real battle has to be won if we are to be successful in reversing current trends.

On the subject of our conversation last week, I am attaching a brief note which you may find useful as a summation of one aspect of the problem we discussed.

Thank you again for your interest and courtesy.

Sincerely,

Attachments

Suggested Names

1. Eugene Black	Financial Former Head World Bank Wide Background International and Domestic Government Service
2. John McCone	Business and Shipping Former Head Atomic Energy Government Service
3. Andre Meyer	Financial Wide Background International and Domestic
4. Rudolph Peterson	Former Head Bank of America Wide Background on Government Commissions

1. C. W. Cook	Head General Foods
2. Richard Gerstenberg	Financial Head General Motors
3. John Harper	Head Aluminum Company of America

I know all of these as competent and hard working. The first four are more senior in age and background. The latter three are active in their careers but good.

MEMORANDUM ON ANTI-TRUST POLICY AND ITS RELATION TO THE ECONOMIC POLICY OF THE UNITED STATES

The most significant comment on the Antitrust policy as related to the economic policy of the United States, which is the responsibility of the executive branch of the government, is that there has been little past correlation between the two policies although high interdependence is necessary for successful economic progress.

A specific example in this respect is to be found in the Economic Report of the President, dated February, 1970. What follows are excerpts from the broader text.

Page 95 . . . . Mergers, even between competitors, are not per se violations of the law, however, and they may even favor healthy competition. The ready marketability of a firm may encourage others to become entrepreneurs and establish new enterprises. Mergers may also be an efficient way of replacing incompetent managements. They may lead to greater economies of scale in production and marketing. And they may make it easier to transfer resources to the industries or enterprises that can most effectively employ them. In addition, access to capital markets may be facilitated. Nonetheless, the law prohibits mergers whose effect ". . . . may be substantially to lessen competition, or to tend to create a monopoly." An accomplished effect deleterious to competition need not be proved; it is sufficient if there is a reasonable likelihood that such an effect will follow . . . .

Page 96 . . . . The Department of Justice has announced that it intends generally to adhere to its 1968 guidelines, but that it probably will oppose any merger among the top 200 manufacturing firms or firms of comparable size in other industries, or any merger by one of the top 200 manufacturing firms with any leading producer in any concentrated industry. This program is based upon recent decisions of the Supreme Court condemning mergers that eliminate significant potential competition, entrench leading firms in concentrated markets, substantially increase the power of large firms to engage in reciprocity, or further a trend of mergers that would lessen competition. The staff of the Federal Trade Commission has recently issued a report on conglomerate mergers. The Commission is planning to continue its study and to coordinate it with a projected Administration study of economic concentration, including conglomerate mergers . . . . (underline added)

The key sentence in the above is the statement in reference to the Antitrust Division, is that "this program is based upon recent decisions of the Supreme Court . . . ."

However, the Supreme Court is not "making" these decisions. They are in most cases merely affirming the "invitation" to these decisions as sent up by the Antitrust Division of the Department of Justice. In fact since the advent of the Warren Court, 62 out of 65 cases in this area have been affirmed for the Government. The Supreme Court, therefore, is endorsing and confirming what it conceives to be the economic policy desired by the Government almost precisely as presented by the Antitrust Division. In short, the Antitrust Division is writing, in this method, its own economic policy for the nation. Similar comment can be made in certain respects as to the Federal Trade Commission.

Recent and past events indicate that there is often little relationship between the economic policy desired by the Executive Branch of the Government and the Antitrust Division's cases, including landmark precedent cases stretching the intent of the law. The latter in many cases are derived from increasingly unreasonable theories and narrow concepts which are unrelated to real "competition" or to today's realistic problems of Government and present day international and domestic national economic needs.

To emphasize this unreal condition, it should be noted that the most recent amendment by Congress of the Clayton Act was in 1950.

The cases sent by the Antitrust Division to the Supreme Court are therefore in many instances "invitations" to spell out increasingly restrictive economic policy based on the exceedingly vague process of "interpreting" the "intention" of Congress when passing this amendment in 1950.

Since the problems and the conditions faced by the United States today, 20 years later, in its international affairs are almost 180 degrees different than they were in 1950, this at best is a very outmoded model to work from and at worst results in direct conflict with the national interest.

For example, in 1950 -- compared to today's conditions --

1. There was no European Common Market.

2. Both Europe, including Germany, and most particularly Japan were "flat on their backs" as far as trade competition with the United States was concerned as they were still recovering from their own internal problems.

3. The dollar was in short supply in contrast to present conditions today. Our gold stock was then at $23 billion and has since dropped to $11 billion. Our total international reserve assets have similarly dropped from $24 billion to $14 billion. In sharp contrast our liquid liabilities to foreigners directly or indirectly have risen from $16 billion in 1957 to almost $45 billion in 1970. This is dramatic change from 1950.

4. In 1950 the United States was pre-eminent in its position in international markets because of its large excess of exports over imports. In fact, at that time the United States was almost the sole supplier of money, goods and services to a world that was not quite recovered from World War II. For example, in the four years 1946-49 we had a cumulative excess exports over imports of $32 billion. By contrast, today in spite of our much larger economy our cumulative excess of exports for the last four years 1967-70 was only $14 billion, and is still declining.

5. Largely due to inflationary increases in wage costs, the United States has lost, in this intervening period since 1950, the competitive and cost advantage it enjoyed in the early post-World War II years and in prior periods. Perhaps a more direct way of pointing this out is to indicate that names like Volkswagen, Datsun, and Fiat, which today comprise 15% of our domestic auto market were unheard of at that time. Japanese and Far Eastern imports of such companies as Sony, Hiatachi, etc., and other Far Eastern sources already represent about 28% of the United States domestic consumer electronics market today. And, finally, the small quantities of foreign steel which turned up in our economy in those days were insignificant and amounted to .2 of 1% of our total steel consumption, whereas today U.S. steel imports would amount to 15%. One could add that Harley Davison and Indian motorcycles, both good American makes, were occasionally seen on the highways, not the thousands of Honda, Suzuki, Triumph, etc., which today comprise 93% of our domestic market. Many of the same comments could be made for shoes, textiles, cameras, binoculars, and many other areas which have seen major changes.

More importantly, the trend has not stopped.

6. Further, the enlargement of the Common Market to include Great Britain, Ireland, Denmark, and possibly Spain and other countries will present even greater competitive problems to the United States businesses in international markets and even greater impacts from imports and/or other necessary steps taken to protect our domestic markets which can eventually only have the result of higher costs at home and further deterioration of our international situation.

In conclusion, since the amendment to the Clayton Act by Congress in 1950--the United States has moved from a position of unchallenged pre-eminence in foreign trade -- sharply to a defensive one -- and the trend is still adverse. This trend is not due to "anti-competitive" practices. In addition to being out of date, the Clayton Act is already so vague as to require strict construction rather than continually expansive and theoretical interpretations which are remote from reality and which will further weaken our competitive effort.

Yet, as stated, our government is still forming its broad economic policy in these important areas of our competitive industry capabilities by allowing the Antitrust Division to send to the Supreme Court cases inviting far-reaching new theories of purported "interpretation" of the "intent" of Congress in 1950." This "innovative urge" to expand the meaning of the law through such theoretic devices as, for example, "potentiality" is in sharp contrast with the actual assignment of the pursuit of real anti-competitive practices. This can be economic disaster, since the lawyers presenting to and those comprising the Supreme Court do not have the expertise or responsibility to determine long-term national economic policy.

It would seem clear, therefore, that any meaningful development of economic policy will require review for at least a commonality of purpose of these cases by other areas of the Executive Branch of the Government and of the economic theories and philosophy and legal arguments contained in these requested decisions before they are sent to the courts. Only in this manner can agreement and support be reached for the other areas of the Executive Branch who do have the broad responsibilities for the national economic future -- and who must, therefore, participate actively in such decisions to be taken in the national interest and in the selection of such cases as will give constructive economic policy, or at least to prevent seeking destructive policy, before such "interpretations" are sought and then become binding law, equivalent in impact to major new Congressional legislation.

F. Conlon

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION
1707 L STREET, N. W.
WASHINGTON, D.C. 20036

WILLIAM R. MERRIAM
VICE PRESIDENT
DIRECTOR, WASHINGTON RELATIONS

April 22, 1971

The Honorable
John B. Connally
The Secretary of The Treasury
Washington, D. C. 20220

Dear Mr. Secretary:

Pete Peterson and I thought you would be interested in the results of the calls Harold S. Geneen and I made on Friday, April 16, when we discussed antitrust matters and their impact on the economy of the country.

003808

I am sure you heard that the Justice Department agreed to postpone for thirty days their filing of jurisdictional papers on the ITT-Grinnell case. This, of course, was great plus and will give us time to work out a settlement. Actually, the thirty-day Administration sponsored delay came as a surprise because we understood that on Monday morning Dick Kleindienst had been negative about a delay.

You might also be interested in knowing that Felix Rohatyn had a very productive conversation on Tuesday of this week with Mr. Kleindienst. The purpose of this visit was to explain to the Deputy Attorney General all of the domestic and international economic ramifications if ITT had to divest Hartford. A meeting between Mr. Rohatyn and Mr. McLaren is now scheduled for May 5 at 3 p.m. Mr. Kleindienst plans to sit in and monitor this meeting.

I will, of course, keep you posted. In the meantime, if there is anything further you think Hal or I should do with other members of the Administration, please do not hesitate to let us know.

The Honorable
John B. Connally
Page 2

WM

Hal and I are most appreciative of the fact that you were able to see us the other day on such short notice. We are certain that you and Pete were most instrumental for the delay.

Kindest personal regards,

Bill Merriam

003803

WM

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

April 27, 1971

FOR: John Ehrlichman
✓ Dick Krogh

FROM: Peter G. Peterson

003902

Here is latest letter from IT & T on antitrust. Please keep in mind my reason for involvement is that the President asked Hal Geneen to talk with me about antitrust.

Any suggestions on what I might say?

From Mr. Merriam
4/26/71

...ONE AND TELEGRAPH CORPORATION
1707 L STREET, N.W.
WASHINGTON, D.C. 20036

WILLIAM R. MERRIAM
VICE PRESIDENT
DIRECTOR, WASHINGTON RELATIONS

April 26, 1971

WH

The Honorable
Peter G. Peterson
Assistant to the President for
International Economic Affairs
Old Executive Building
Washington, D. C. 20500

003903

Dear Pete:

In a long conversation with Hal this morning from Florida, he asked me to check in with you to be sure you had heard about the fact that Mr. Celler, the Chairman of the House Judiciary Committee, was planning to introduce legislation that would prohibit the nation's 500 largest industrial corporations from merging with each other or with any small companies with assets of $100,000 or more.

I am sure you realize that he is concerned about this; and while I tried to assure him that such a bill had very little chance of being passed, he is afraid that the press might grab it and blow it out of proportion thus affecting the delicate negotiations we are beginning with Mr. McLaren on Thursday, the 29th. You might have heard of the Attorney General's speech in Savannah almost two years ago in which he cited as antitrust policy for the Nixon Administration almost the same thing that Emanuel Celler has proposed. Mitchell said that none of the top 200 companies should be allowed to merge. We have alerted Clark MacGregor to this matter, and we plan to generate some speeches ridiculing the Chairman's proposed legislation.

We would appreciate any suggestions you might have on what we should do about the matter. Perhaps this is the time

to resurrect the Stigler Report which was prepared by the Administration in the beginning of Mr. Nixon's term.

Please excuse me for bothering you everyday, but I am sure things will get better sometime soon.

003904

With warm regards,

/cmb

19.4 PETER PETERSON MEMORANDUM, MAY 3, 1971 WITH ATTACHMENT

May 3, 1971

FOR: John Ehrlichman
✓ Dick Krogh

FROM: Peter G. Peterson

004144

You probably have a very similar letter, but if you don't, here it is.

From Mr. Merriam
4/30

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION
1707 L STREET, N.W.
WASHINGTON, D.C. 20036

WILLIAM R. MERRIAM
VICE PRESIDENT
DIRECTOR WASHINGTON RELATIONS

April 30, 1971

The Honorable
Peter G. Peterson
Assistant to the President for
International Economic Affairs
Old Executive Building
Washington, D. C. 20500

004145

Dear Pete:

Hal Geneen thought you would be interested in seeing a copy of the application for further extension of time, which was submitted by Mr. Griswold as a result, I am sure, of action on the part of certain Administration principals. Hal is particularly impressed with the last paragraph of the application which states:

"The additional time is needed for further study of the case and to permit consultation among various interested government agencies with regard to whether the government should perfect its appeal."

We all are hopeful, of course, that during the next twenty days Paul and the two Johns can convince the Department that the merger policy as now practiced will be suicidal for the economy of the country. I am sure you agree with us that Hal's memorandum which we left with you several weeks ago could serve as a guideline for future merger policy.

The work you and your associates have done has been highly effective--so much so that the Antitrust Division seems to show some evidence of concern. This is a step in the right direction.

With warm regards,

Bill

20. On April 28, 1971 Ehrlichman wrote a memorandum to the President criticizing McLaren for failure to follow the Administration's antitrust policy, then under study by a Domestic Council Task Force, and recommending action to be taken. The President approved Ehrlichman's recommendations.

		Page
20.1	Memorandum from John Ehrlichman to the President, April 28, 1971 (received from White House).....	394
20.2	Memorandum from John Ehrlichman to Members of the Domestic Council, February 19, 1971 (received from Department of Justice).....	396
20.3	Memorandum from Egil Krogh to Richard McLaren, April 30, 1971 (received from White House).....	398
20.4	Memorandum from John Ehrlichman to John Connally, John Mitchell, George Shultz, Paul McCracken, Peter Peterson, and Peter Flanigan, September 14, 1971 (received from Department of Justice).....	401

20.1 JOHN EHRLICHMAN MEMORANDUM, APRIL 28, 1971

THE WHITE HOUSE

WASHINGTON

April 28, 1971 ACTION

MEMORANDUM FOR THE PRESIDENT

FROM JOHN EHRLICHMAN

SUBJECT ANTI-TRUST POLICY

The ITT cases have surfaced what we have known to be a problem for some time. Your strong views on how the Administration should conduct anti-trust enforcement are not being translated into action.

In a meeting with Pete Peterson and Peter Flanigan I learned that Arthur Burns and the Fed are working on anti-trust policy proposals for you, at forced draft. When these are submitted to you they will leak, no doubt.

May I suggest: 004132

(1) McLaren and the Attorney General be requested to provide you, in writing, with a report of the posture of the ITT and associated cases. (My hunch is that McLaren may have invented reasons to appeal the ITT case and he should be put on his proof). Unless we have a clear picture he will be likely to drive these ahead quickly.

(2) The Fed's project should be suspended for now. We will be studying cartels and foreign trade shortly in the Council on International Economic Policy. We can start it up again then. But right now the Fed getting into this seriously threatens to scare McLaren off our Domestic Council project (getting him to set out Administration anti-trust policy, in writing). That may sound silly, but I'm convinced McLaren's belief that Arthur is about to make conservative recommendations will cause McLaren to be less candid in his work to us. We will, thereby, end up with less ammunition.

(3) You should authorize us to require all government-wide anti-trust policy work to be coordinated through one White House office, preferably the working group under Krogh that has been at work on this for the past 90 days.

Approve: _____ Disapprove: _____

004133

THE WHITE HOUSE

WASHINGTON

February 19, 1971

DOMESTIC COUNCIL STUDY MEMORANDUM #12

TO: MEMBERS OF THE DOMESTIC COUNCIL

SUBJECT: Antitrust Policy

By direction of the President, the Domestic Council will undertake an examination of existing Administration antitrust policy in all of its aspects, including the conduct of American "persons" abroad, as a foundation for further policy determinations.

Accordingly, the first assignment of the working group will be to gather and analyze the state of the law, both statutory and decisional, regulations in effect and policy-in-being employed by the Executive branch.

The Domestic Council Committee on Antitrust Policy will consist of the following:

The Attorney General
The Secretary of Commerce
The Secretary of Treasury
The Secretary of Labor
Director, Office of Management and Budget

The working group will consist of the following:

Assistant Attorney General Richard McLaren
Assistant to the President Peter Flanigan
Assistant to the President Peter Peterson
General Counsel, Department of Commerce, James Lynn
Chairman, Council of Economic Advisers, Paul McCracken

Domestic Council staff contact will be Egil Krogh, Jr.

It is contemplated that the Domestic Council Committee will be convened for its first meeting in the second week in March. At that time a preliminary report of the working group should be received and a calendar should be established for the further work of the Committee, pointing to a Policy Review Paper to be submitted to the President by April 15, 1971.

John D. Ehrlichman

April 30, 1971

MEMORANDUM FOR:

RICHARD McLAREN
Assistant Attorney General
Antitrust Division

John Ehrlichman has reviewed in detail your March 22, 1971, Antitrust Law and Enforcement Policy paper and has asked for clarifications and additions which would make the report a more complete and useful working paper for the Domestic Council Subcommittee.

His recommendations are briefly as follows: 004115

Page 9	Include a short statement of the working law in connection with the treatment of the Wilson Tariff Act.
Page 14	Expand upon the section on Webb-Pomerene Associations, giving emphasis to detailing the working law.
Page 20	Flesh out the discussion of the law dealing with antitrust immunity for certain arrangements among airlines, with particular emphasis on mergers.
Page 31	Expand upon and give authority for the statement: "Under the patent system the public interest is paramount; reward to inventors is a secondary consideration."
Page 42	Identify the source of the policy recommendation that state governments should repeal Fair Trade laws. Also, include Miller-Tydings with the discussion of McGuire if this is appropriate. Is there a reason it was left out?
Page 45, 46	Expand upon the basis of the policy for pursuing entire industries for systematic reciprocity.
Page 47	Expand upon and detail the basis for the recommendations made to Congress on ways of reorienting FTC enforcement policy concerning Robinson-Patman Act. Explain how the position was reached.

these pages.

Page 61 — Explain the term "protective" notice of appeal used in connection with ITT-Grinnell case.

Page 62 — Detail what is meant by "inherently suspect" in referring to mergers among major firms contributing to the trend toward economic concentration.

Page 62 — In the footnote, reference is made to non-economic factors intended to be part of the philosophy of Section 7. List these factors and give authority for the assertion.

Page 65 — Expand upon the first section discussion of the applicability of the antitrust laws to various aspects of the patent system.

Page 73 — Give more background and specify the relief sought and present status of the Westinghouse-Mitsubishi complaint.

Page 74 — Give specific examples of the benefits realized by the American economy from the competitive influence of foreign firms.

Page 77 — Expand upon the basis and process by which the Antitrust Division develops its position with regard to antidumping cases and proceedings before the Tariff Commission. Give examples.

Page 83 — Spell out the Antitrust Division's position relative to the airline merger criteria recently outlined by the Department of Transportation.

Page 91 — Elaborate on the Division's policy concerning the licensing of nuclear reactors to be used in commercial electric power generation.

Page 92 — Explain and identify the policy, procedural and substantive, regarding the requirement that the Department submit an annual report surveying effects on competition of state oil conservation controls.

Page 94 — Elaborate on the Department's liaison policy and substantive input to HEW's task force examining the high cost of health care and drugs.

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of the patent laws.

It would be worthwhile, particularly since both Jim Lynn and Henry Houthakker raised the points in their issue papers, to include a separate section which delineates present Department policy on case, defendant and forum selection.

You should also include a statement of present policy on informing and/or coordinating antitrust enforcement policy with other federal government agencies, prior to the bringing of litigation. Emphasis should be placed on the new priority enforcement areas such as conglomerate mergers, patents, reciprocity, etc.

More detail on the Department's policy with regard to giving opinions under the Business Review Procedure and other non-litigation or informal procedures relating to antitrust compliance would be most helpful. Indicate the extent to which such procedures are used.

004117

In addition, a statement outlining the sources of economic information upon which the Department bases its enforcement policy and priorities should be included.

A brief analysis of the procedural steps leading to the filing of an antitrust case would be a useful tool for the Committee's work. This would include the point at which a case originates, how it progresses to the filing stage and what, if any, information or advice is sought outside the Division.

It is suggested that when the appropriate changes and additions have been made to the report, that corrected pages be sent to me for further distribution to the working group. If no further comment is then forthcoming from the working group, a meeting of the Domestic Council Subcommittee will be scheduled.

I would hope that we could have additional material from you by Monday, May 17. I will be out of the city for about a week and a half starting May 4. If you have any questions in my absence, please contact Dick Nordahl.

Bud Krogh

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THE WHITE HOUSE

WASHINGTON

September 14, 1971

MEMORANDUM FOR

Eyes Only

SECRETARY CONNALLY
THE ATTORNEY GENERAL
GEORGE SHULTZ
PAUL McCRACKEN
PETER PETERSON
PETER FLANIGAN

RE: ANTITRUST POLICY REVIEW

As you know, a small unit of the Domestic Council staff has been reviewing current antitrust policy at the President's request.

I am sending you a copy of Lew Engman's memorandum to me dated September 1 with its attachments.

In these 30 or 35 pages are a succinct review of present antitrust policies and some possible future directions.

It seems to me that the next step would be for the gentlemen named above to meet, as a Committee of the Domestic Council, prepared to discuss and make recommendations for the future course of this study.

I am sure that the President will want to know what each of you thinks about these proposals at the time that they are submitted to him for review.

My office will be calling to arrange a meeting in the near future which is mutually accommodated to our calendars.

Meantime, may I request that you not share this document with anyone else. It is for your eyes only at this stage, for obvious reasons.

John D. Ehrlichman

21. On April 29, 1971 Rohatyn accompanied by four ITT representatives met with Kleindienst, McLaren and Antitrust Division and Treasury Department staff members. The ITT representatives presented ITT's position that there would be adverse economic and financial consequences if the divestiture of Hartford were required. Following the meeting McLaren caused these arguments to be submitted to the Treasury Department and to Richard Ramsden, an independent financial consultant who had previously rendered advice to the Antitrust Division.

Page

21.1 Richard Kleindienst testimony, 2 KCH 98..... 404

21.2 Richard McLaren testimony, 2 KCH 102-03..... 405

21.3 Felix Rohatyn testimony, 2 KCH 114-16..... 407

21.4 Richard Kleindienst notes of April 29, 1971 meeting (received from Department of Justice)..... 410

21.5 Letter from Felix Rohatyn to Richard McLaren, May 3, 1971 (received from Department of Justice)..... 419

I do not know who arranged the meeting so far as it was concerned, but thereafter, on April 29, a rather large meeting was held in Mr. McLaren's office. He had several members of his staff, there were two representatives from the Treasury Department. I was there, and I.T. & T. with Mr. Rohatyn had several persons there who were economists or financial experts.

That meeting was a rather long meeting as I recall. Mr. Rohatyn led off the discussion, and that was followed by presentations made by other representatives on behalf of I.T. & T. They gave written material and also verbal opinions, and it all went to this whole question of the economic consequences of divestiture by I.T. & T. of the Hartford Insurance Co. My recollection is that unless there was an incidental question raised by Mr. McLaren or members of his staff or of the Treasury Department people that nobody on behalf of the Government contributed anything to that meeting. My recollection is that I sat there and I said nothing myself.

The meeting adjourned, and the next time I had any conversation with anybody about it was on May 10 when Mr. Rohatyn again came to my office. Incidentally, with respect to these visits to my office by Mr. Rohatyn, they were made by appointment. The appointment was put in my calendar, and in the calendar of my secretary, and he came in the regular entrance of the Department of Justice, identified himself to the guards down there, and they would call up and say it is Mr. Rohatyn, and then he would be shown or asked to come up to my office.

On May 10, he came in to ask me what we were going to do about this economic situation, and I told him that the matter had not been decided by Mr. McLaren, and that his company would be advised when that occurred.

Shortly after the April 29 meeting I had a conference with Mr. McLaren, and I believe he initiated it, in which he said that based upon the information given to him by I.T. & T. at that meeting, and the written data that they had provided, he thought that a very serious question in terms of the economic impact of the divestiture of Hartford had been raised and he felt that the Government had a duty, or he had a duty in the discharge of his obligations to have the advice and counsel of an independent consultant to furnish an opinion as to whether or not the information supplied by I.T. & T. was accurate, and whether or not the projected consequences would accrue. Mr. McLaren made arrangements for such an economic consultant, and after he had done that, and after the May 10 meeting with Mr. Rohatyn, Mr. McLaren called me and came up to my office and I believe that that was on June 17, 1971.

And he said that he had gotten the opinion back from the consultant, that he had arrived at the determination that provided an overall settlement could be made with I.T. & T. with respect to all of their antitrust matters before the Department of Justice, that it would be advisable to work out a settlement with I.T. & T. that would not require the divestiture of the Hartford Insurance Co. He had with him a proposed settlement agreement or outline. He then suggested that he call Mr. Rohatyn in my office and indicate what his decision was, and to read to him his proposed settlement framework in these matters.

Grinnell and ITT-Levitt, as well as certain other subsidiaries of ITT which might be agreed upon, provided that they could retain Hartford. Now, Mr. Rashid, I might interpolate, director of the operations of the division, was with me at this meeting. We discussed the Jacobs' proposal with the staff and we agreed to reject it; I called Mr. Jacobs and told him of this and told him that I could see no reason for any such settlement as they had proposed. Jacobs later wrote me a letter generally confirming this discussion.

At some time in the spring of 1971—I believe in March—we received word from ITT representatives that ultimate divestiture of Hartford would be almost a fatal blow to ITT and that they would like to make a presentation to establish this fact and to establish a basis for negotiations for settlement without a Hartford divestiture. As I recall, someone representing ITT gave that message to Mr. Kleindienst, and he relayed it to me. I said that I would be perfectly willing to meet with the ITT people and to hear their presentation. I am sure that I told him that it would have to be a very persuasive presentation because I had made what I regarded as a "hardship" kind of settlement with Ling-Temco-Vought, and I felt that any such settlement should be made only under very exceptional circumstances.

I might add that his previous approaches had been on the theory that I was wrong on the law, and that even if I possibly could win the cases, they were willing to take an injunction against reciprocity, and they would make no more big acquisitions and that we would finish up the case, and I think we would be saved embarrassment was their view.

Later they made their offers on the basis that they were suggesting all of the relief that we were entitled to and all that we could possibly get in court, so this was the first approach that they had made on the basis that a decree requiring them to divest Hartford would destroy the company.

In any event, a date was set for April 29 and the requested meeting was held in my office at the Department of Justice attended by the following representatives of ITT: Howard J. Aibel, senior vice president and general counsel; Felix Rohatyn, director of ITT, member of Lazard et Freres; Henry P. Sailer, Covington & Burling, who was ITT's counsel in the *Grinnell* and *Hartford* cases. Also attending as special consultants to ITT were: Dr. Raymond Saulnier, Columbia University; Prof. Willis J. Winn, Wharton School, University of Pennsylvania. Representing the Government were Mr. Kleindienst, myself, my Deputy, Mr. Walker B. Comegys; our Deputy Director of Operations, Mr. Robert Hummel; Mr. Charles Mahaffie, chief of the trial section; and Mr. Ray Carlson, who was chief of our trial staff on the *Hartford* case. Also present, at my request, were Mr. Bruce MacLaury, Deputy Under Secretary for Monetary Affairs of the Treasury Department, and one of his assistants, Mr. Timothy Green.

The substance of the ITT presentation was that a Hartford divestiture would cost the ITT stockholders approximately $1 billion, and that ITT would be greatly weakened, particularly in its oversea operations—to the detriment of our balance of payments. The reasons for this are varied but include the fact that ITT paid a $500 million premium for Hartford, which it could not expect to recover on a forced sale; it would have had to pay a very large capital gain tax on any sale of its Hartford stock; and if it spun off the Hartford

stock to its stockholders in a tax-free reorganization, it would be left with an unmanageable issue of preferred stock.

Following the meeting, we of the Antitrust Division requested the Treasury representatives and an outside consultant—I believe Mr. Kleindienst said economist, I think he was a financial expert—to evaluate the ITT claims.

Shortly after the middle of May, the experts reported that there was substantial support for the arguments made by ITT and that a Hartford divestiture would be indeed very difficult for ITT and, because of changes in the law and in accounting practice, such a divestiture would probably entail a very large loss to ITT stockholders; $1.2 billion was one estimate, and that was made in a written report. I believe copies have been furnished to members of the committee, along with a copy of my prepared statement.

(The material referred to follows:)

RAMSDEN REPORT

INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.

BACKGROUND

On April 10, 1969 International Telephone and Telegraph Corporation (ITT) and The Hartford Fire Insurance Company (Hartford) entered into an agreement for merger of Hartford with ITT. On August 1, 1969 the Justice Deparmtent filed suit asserting that the transaction violated Section 7 of the Clayton Act. The Government's application for an injunction was denied in U.S. District Court on October 21, 1969. In November, 1969 the merger received the approval of the Hartford shareholders; however, on December 13th, the Insurance Commissioner of the State of Connecticut disapproved the merger, suggesting an exchange offer to the Hartford stockholders would have been a more proper method. Thereupon, ITT instituted steps to make a voluntary exchange offer to Hartford stockholders. In June, 1970 ITT acquired a 99.8% interest in Hartford through the issuance of 21,735,702 shares of Cumulative Preferred stock, $2.25 Convertible Series N for a like number of shares of Hartford. The transaction was non-taxable and treated as a pooling for accounting purposes.

Pending trial of the U.S. Government's suit, ITT is required, based on the October 21, 1969 ruling of Chief Justice William Timbers of the U.S. District Court for Connecticut, to hold the Hartford business separate from the other businesses of ITT.

PURPOSE

The purpose of this paper is to examine the financial and economic consequences of a divestiture of Hartford by ITT. Among the subjects to be considered are:

(a) The present estimated value of Hartford as a separate entity;

(b) The effect upon the market price of ITT of a divestiture of Hartford;

(c) The effect of a divestiture upon ITT's balance sheet, its ability to borrow outside the United States and to maintain its positive balance of payments position;

(d) Finally, a brief examination of the additional impact of a divestiture of Canteen Corporation and Grinnell Corporation, two additional acquisitions which are being challenged through court action by the Federal Government.

HARTFORD

At the time of the exchange offer on May 22, 1970, Hartford's mean bid price in the over-the-counter market was $38.25. Based on the 22 million shares outstanding, the market valuation of Hartford was $842 million. ITT, in its exchange offer, for each share of Hartford, was issuing a Series N Preferred stock, convertible into 1.25 shares of ITT. Based on ITT's mean market price on that day of $39.25, 1.25 shares were worth approximately $49. Thus, ITT at then market values, was paying $1.08 billion for Hartford, a premium of approximately 28%. This price was also 222% of the book value of Hartford's stockholders equity at December 31, 1969 of $486 million.

I have with me copies of the three decrees that were entered against ITT, pursuant to our settlement. Essentially, they require three things: (1) a divestiture of firms with approximately $1 billion of sales—which is one of the biggest, if not the biggest, divestiture in antitrust history; (2) a prohibition against further acquisitions by ITT which might have anticompetitive effects, and (3) a prohibition against use of systematic reciprocity by any of the ITT companies. I am responsible for that settlement and I stand fully behind it. In my professional opinion, it is an excellent settlement from the Government's standpoint not only as a matter of disposition of this litigation but for its overall impact in promoting compliance with the antitrust laws in deterring anticompetitive mergers.

The CHAIRMAN. Mr. Rohatyn.

Mr. ROHATYN. Mr. Chairman, I thank you for the opportunity to appear in front of you and your Committee.

My name is Felix G. Rohatyn. For the past 12 years I have been a general partner in the investment banking firm of Lazard Freres & Co., and since 1968 have been a director of International Telephone and Telegraph Corp.

I am open to the committee's questions concerning my role in the settlement of antitrust litigation brought by the Justice Department against ITT, but would like to begin by describing the nature of discussions in which I participated with Justice Department officials.

It had been our belief that a forced divestiture of Hartford Fire could raise fundamental issues of national policy——

Senator HART. Mr. Chairman, I wonder if the witness could proceed more slowly. We do not have a copy of his statement.

Mr. ROHATYN. I am sorry, Senator Hart.

The CHAIRMAN. Do you have extra copies of your statement?

Mr. ROHATYN. Yes, sir. I can get them for you right now, sir, if you like.

The CHAIRMAN. Let us have order. Proceed, sir.

Mr. ROHATYN. It had been our belief that a forced divestiture of Hartford Fire could raise fundamental issues of national policy transcending both the narrow scope of traditional antitrust philosophy and the narrow interest of ITT. Several points were involved, including possible United States balance of payments effects and government policy toward preserving the underlying strength of domestic companies competing overseas. In addition, as chairman of the New York Stock Exchange Surveillance Committee during that period of financial crisis, I was concerned that so massive a divestiture might unsettle our securities markets, and with possible impact on some financial organizations.

Early in April of 1971, I was asked by Mr. Harold Geneen and by our counsel to prepare a comprehensive treatment of these issues for presentation at the Department of Justice. I was thought qualified in these areas as an economic and financial specialist. Since the policy considerations to be raised ranged beyond antitrust enforcement policy, and because Attorney General Mitchell had disqualified himself, I met first with Deputy Attorney General Richard Kleindienst, to outline our thinking in general terms. On April 20, 1971, Mr. Kleindienst directed that a full presentation be made to Mr. McLaren.

This we did late in April, at a meeting chaired by Mr. McLaren and attended by Mr. Kleindienst, several Antitrust Division staff members, ITT counsel, and Mr. Bruce MacLaury, then Treasury's Deputy Under Secretary for Monetary Affairs. Two distinguished experts aided in the presentation——

The CHAIRMAN. Speak a little louder now.

Mr. ROHATYN. Mr. Willis Winn, then dean of the Wharton School and now president of the Cleveland Federal Reserve Bank, and Dr. Raymond Saulnier, a professor at Columbia University who chaired President Eisenhower's Council of Economic Advisers. We left our supportive documentation for review, supplemented by a letter to Mr. McLaren sent several days later.

My second significant involvement came 2 months later, June 17, after Mr. McLaren had completed a memorandum detailing the Antitrust Division's recommendation with respect to a proposed negotiation of settlement. In a three-way telephone conversation, Mr. McLaren and Mr. Kleindienst informed me of its content, which I transmitted to Mr. Geneen after expressing my great disappointment. The Antitrust Division had concluded, after review of our economic policy arguments, that ITT might be allowed to retain Hartford Fire if it were to divest Grinnell, Canteen, Avis, and Levitt while limiting certain types of acquisitions and practices in future. It should be noted that Avis and Levitt previously had not been the subject of any antitrust litigation for asset values subject to divestment. Shortly after my formal presentation to Mr. McLaren and staff, I asked Mr. Kleindienst the status of review. He told me that Mr. McLaren was studying our documentation seriously. I met with Mr. Kleindienst twice following submission of Mr. McLaren's recommendation, once to reiterate our broad policy concerns over so large a divestment and once to state that ITT saw no progress in negotiations.

Mr. Kleindienst twice said that efforts to negotiate a settlement would simply have to run their course, and that Mr. McLaren was in full charge.

Every meeting was on the record. No meeting or telephone conversation was held in a covert or surreptitous manner. There was no hint of any favor offered or sought.

When the agreement was finally reached, I felt that a negotiation had run its normal course, with due allowance for the additional time required and tension generated by the extraordinary complexity and financial import of the matters involved. It was always clear to me that Mr. McLaren was making the decisions, approved on his recommendation by Mr. Kleindienst, and that he had negotiated the terms with ITT counsel.

This summarizes my participation in and my view of these discussions. I will be happy to give you any details in a few minutes. Let me now turn to the ITT Sheraton-San Diego commitment.

Last Sunday evening, February 27, 1972, I was at Kennedy International Airport awaiting an outbound flight. I was talking with my children on the telephone and was told that Mr. Hume had called from Washington asking urgently that I speak with him. I didn't know who Mr. Hume was but returned his call from the airport. He identified himself as an associate of Mr. Jack Anderson, then read a

memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating $1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. MCLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. MCLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a $400,000 contribution from ITT to the city of San Diego?

Mr. MCLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. MCLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

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NOTES BY RICHARD G. KLEINDIENST, APRIL 29, 1971, ON MEETING WITH FELIX ROHATYN AND OTHERS ON ECONOMIC HARDSHIP ARGUMENT

4/29/71

10;30 a.m.
McLaren's office

Subjects:

"Some of the economic consequences
that would result from a divestiture
by ITT of"Hartford"

Confidential:

11:25 Royahan:
- 2 ways to divest
  a) Spin off to Public
  b) Sale to the public

Common for Common
instead of
- ITT could not now acquire
  impossible to sell because of changes in
  accounting rules.
- purchasers not available.

- What are the econ.
  - outright sale of stock has --
    - Hart. earned 88 m - 30 capital gain
      last year. Net worth of 500 m.
      by any Standard of Value - high side
      of value - would be 15 times earnings
      including Capital Gains = 1.3 billion.
      - ITT has 22 m. shares - 1.76 billion
      - ITT could not sell 1.3 billion on the
        streets - over a period of time,
        depressing value of stock.
        1.8 vs 1/3 -
        Capital gains tax of 250 m.

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House Judiciary Committee staff

- Hartford on [unreadable] ITT & at 500 m
  or less - with a capital gain of on
  800 m. = tax of 250 m.
  net worth 1 B of a [unreadable] invest a
  market value of 1.8 B.
  - If ITT invested 1.B -
    at 8% return of 40 m.
    after taxes.
    as a reduction of 40 m in
    earnings - reducing Value
    of ITT stock by $10/sh -
    giving a loss of 1B to
    stock holders-

- paid for Hartford
  22 m. shares of preferred of ITT
  for Hartford-(no par convertible
  preferred).
  45-50 trade when Hartford was
  selling for 35.
  2.25/sh. dividend on ITT Preferred
  now July 1.76 B. value today of ITT Preferred
  1.6 when acquired.
  - 500 m. premium at the time
    larger to day because of increase
    in value of ITT Comm.
  - economic loss at 1B.

[unreadable]
3.17 earnings - $64 common value
21 times
- ITT w/o Hartford-the maj.
  of its domestic earnings reduced -
  with loss of 500 m. borrowing
  power gone -
  ITT's multiple would go down
  to 17 times earnings - instead of
  21 - and Hartford would be
  down to a max. of 15
  ITT reduce dividends - because of
  loss of Hart. therefore reducing
  ITT stock to $40 - instead of 64 -
  or 40 for ITT & 12 for Hartford
  = 52 vs. 64 or a 1.2 B
  loss to the stockholders
  - ITT would be weaker -
  last year had 900 m. foreign loans.
  Supported by its domestic balance
  sheet as support for-
  - another 500 m. of net worth taken
  out vis a vis foreign financing -

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- also value of comm stock domestically determines the ability of ITT to finance in foreign markets
- as value of security goes down. accumulates problems of financing

250,000 stockholders of ITT.
[unreadable] % Institutions -

- Clot-ox Style of disposition not applicable to this situation with 2 large companies. Why? What is Clor-ox?

a Spin off would be better Why?

Saulnier Balance of Payments
11:50 A.M.

- U.S. problem - big - [unreadable]?

Δ a Sub. plus in B of P:
- repatriating earnings abroad
sub. amts of financing overseas
this no exportation of Capital
- Δ operates as a multi-nat'l unit - a vehicle of import. for B of P benefits

- Quaere: What is nec. for Δ to continue to so operate?
- Persuaded, Δ needs a strong domestic base of operations, giving it a standing to do foreign financing in order to have a positive B of P effect -
- Structuring of reg. dist of Sales is designed with this need in mind -
- So, adverse effects upon this ability and on our nat'l B of B

foreign comp.

- ITT's Spanish Co. SeSa sells equipment to the Spanish gov't.
- they now want 3 yrs - payments vs. 3 mos. - have to - good credits -
- same thing in France.

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- 270 m + B of P ITT -
excess of borrowing

1970 - 103 m. div. royalties.

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4/29/71
10:30 A.M.
Mr. Kleindienst

Subject:

"Some of the economic consequences that would result from a divestiture by ITT of Hartford"

Confidential

11:25 Regatan.

- 2 ways to divest
  - a) Equity to Public
  - b) Sale to the public

Common for Cowan meeting

- ITT cannot now acquire
  - unless to sell because of Congress accounting rules
- purchasers not available

- What are the econ.
  - antitrust Selling Stock for —
    - Hart. earned $8 m — 30 Capital gain last year. Net worth $ 500m. by any Standard of value — high Side of value — would be 15 times earnings including Capital gains = 1.3 billion
    - ITT has 22 m. Shares — 1.76 billion
    - ITT Cannot sell 1.3 billion on the Street — over a period of time depressing value of Stock. 1.8 vs 1.3 — Capital gains tax of 250m.

- Hart ford loan of ITT at 500m
  on lens - with a capital gain of on
  800m. = Loss of 250m.
  net out IB gain 550m. with a
  market value of 1.8 B.
  - If ITT invested 1.B -
    at $70. return of 40m.
    after tax:
      an a reduction of 40m in
      earnings - reducing Value
      of ITT Stock by $10/sh.
      giving a loss of 1B to
      Stockholders -
- paid for Hartford:
  22m. shares of preferred of ITT ....
  for Hartford - (no pre Convertible
  preferred).
    45-50. Trade when Hartford was
    Selling for 35.
  2.25 /sh. dividend on ITT Preferred.
  now pay 1.76 B. value today of ITT Preferred
  1.6 when acquired.
  - 500m. premium at the time
    began to decline increase
    in value ITT Common.
  - economic loss - at 1B.

Spin-off of Canada
3.17 earnings - 64 Common Value
21 basis

ITT w/o Hartford - the major
its domestic earnings reduced -
with long 500m. borrowing
power gone -
ITT's multiple comes down
to 11 basis earnings - instead of
21 - and Hartford would be
down to a max. of 15-
ITT reduce dividends - because of
loss of Hart. therefore reducing
ITT Stock to $40 - unlike of 64-
or 40 for ITT + 12 for Hartford
= 52. vs. 64 or a 1.2 B.
loss to the Stockholders
ITT would be weaker-
last year had 900 m. foreign loans.
Supported by its domestic balance
Sheet as support for
earth 500 m. of net worth taken
out vis a vis foreign financing -
also value of Comm Stock basically
determines ability of ITT to
finance in foreign markets
— as value of Security goes down.
accumulates problems of financing

2:50 Stockholm & ITT.
4070. Resolutions.

✓ Clear-cut Style. & disposition not applicable
& Dis Solution with 2 large Companies.
Why? What is Clear-cut?

a Span-gr wanted be better Why?

Sunday Balance & Payments
11:50 A.M.

✓ U.S. problem - big - How big?

✓ Δ. a Sub. plus in Bg P -
✓ repatriating earnings abroad
✓ Sub. debt. & financing arrears -
Uses no opportunities & Capital
✓ Δ operates as a multi-nat'l Unit -
a vehicle & import. for Bg P benefit

✓ Query: What is nec. for Δ to Continue to So operate?
✓ Persuaded, Δ needs a Strong domestic base & operations, giving it a Standing & as foreign financing in order to have a positive Bg P effect -
✓ Structuring & reg. disk & Sales is Charged with this need in mind
—
✓ So, Adverse effects upon this ability And as are not to Bg P.

Foreign Comp.

✓ ITT's Spanish Co. Sells Such equipment to the Spanish gov't. - they now want 3 yrs - payment VS. 3 mos. - Less $ - Good credit -

✓ Same thing in France -

✓ 270m + B.g P. ITT. et cers g borrowing

1170 - 103m · dei · royalties

21.5 FELIX ROHATYN LETTER, MAY 3, 1971

FELIX G. ROHATYN
44 WALL STREET
NEW YORK 5, N.Y.

May 3, 1971

The Honorable Richard W. McLaren
Assistant Attorney General in
Charge of the Antitrust Division
Justice Department
Washington, D.C.

Dear Mr. McLaren:

I am writing this letter to amplify and augment a point which was made in the course of the discussion which we had in your office last Thursday, in the hope that its importance will not be overlooked even though it was not fully developed in the brief summary memorandum which was left with you, Mr. Kleindienst and Mr. MacLaury.

The point is that in the event a divestiture of the Hartford was carried out by ITT through some kind of spin-off, ITT would be placed in a very difficult cash position which would severely impact its ability to compete in markets abroad. There could be as much as a 45% reduction in cash available to ITT. This shortfall in available cash would arise from the reduction of earnings by $88.7 million on such spin-off while the fixed obligation to pay dividends of $50,000,000 on the Series N preferred stock would continue, since as I explained extensively at the meeting, the exchange could not practicably be made for the Series N stock. These reductions would in turn adversely affect borrowing power by an equal amount since every dollar of retained earnings will support a dollar of borrowing. This shortfall is illustrated by the following table:

1970 Earnings and Dividends with Proforma Adjustment to Put N Preferred from Partial Year to Annual Basis

			1970	
			Consolidated	Excluding Hartford
			(Millions)	
Net Income			$353.3	$265.6
Dividends Paid and Proforma for N Preferred				
All Preferreds Except N		$40.7		
N Preferred for Hartford - Paid in 1970 Partial Year	$26.0			
N Preferred for Hartford - Proforma to Bring to Annual Amount	24.0	50.0		
Preferred Dividends		90.7		
Common Dividends		71.4		
Total		$162.1	162.1	162.1
1970 Retained Earnings after Adjustment for 1970 to Put Hartford N Preferred on Annual Dividend Basis			$191.2	$103.5
Borrowing Capacity on 50/50 Overall debt/equity ratio			191.2	103.5
Total Cash Available From Retained Earnings			$382.4	$207.0
Shortfall in Cash Source to Reduction in Earnings due to ~~Extension~~ Exclusion of Hartford and Retention of Series N Dividend Obligation.			—	$175.4
			or drop of 46%	

While the cash problem would be ameliorated to some extent by spinning off the Hartford shares in exchange for ITT shares, thereby reducing partially the total dividend requirement for ITT common shares, the shortfall in available cash would still be a major concern for several reasons. Among these are (1) the Series N preferred dividend requirement of $50,000,000 would remain, and (2) the exchange ratio offered to ITT shareholders would undoubtedly have to be more than one share of Hartford for each share of ITT common tendered in order to induce the exchange. As a result of being required to offer a substantial discount the number of ITT shares retired could be as little as one half the 22 million Hartford shares, distributed, and certainly no more than three-fourths.

You will remember, I am sure, that at the meeting Dr. Saulnier pointed out that the credit worthiness of a borrower in foreign capital markets such as ITT is heavily dependent on the value which is placed on its common stock on the stock exchanges here, and on the credit rating which its outstanding debt securities receive. Dean Willis Winn, in his remarks particularly referred to the importance of the credit worthiness of a U.S. based company in the United States to successful financing abroad, a major requirement for companies with foreign operations like ITT's in light of the current balance of payments situation.

A major reduction in available cash such as that demonstrated above, will, in addition to having the obvious adverse operational impacts which inevitably follow a contraction of cash, have an adverse impact on equity values as dividends on the common stock come under pressure. Such a cash shortfall would also undoubtedly have an adverse impact on the holders of outstanding ITT debt instruments and on ITT's ability to raise additional funds through debt financing here, but more significantly, abroad.

Among the adverse consequences to the nation that would inevitably follow from the requisite contraction by ITT of its foreign operations is loss of market shares to major foreign competitors such as Ericsson, Siemens, Philips, Nippon Electric and Hitachi. Loss of market shares abroad can only result in a diminution of the cash which ITT would have otherwise repatriated to the United States. It would appear contrary to the national interests of this country to take consciously actions which would have such an adverse impact on the balance of payments.

Thank you once again for the courtesies which were extended to me, Dr. Saulnier, Dean Winn, and counsel. We very much appreciated the opportunity to discuss the overall policy implications of this situation with you, Mr. Kleindienst and Mr. MacLaury.

Very truly yours,

cc: The Honorable Richard G. Kleindienst
Deputy Attorney General
Justice Department
Washington, D.C.

The Honorable Bruce MacLaury
Deputy Under Secretary for Monetary Affairs
Treasury Department
Washington, D.C.

22. Beginning in April 1971 Mitchell, Haldeman, Lawrence Higby, Gordon Strachan, William Timmons, Jeb Magruder and Robert Odle participated in the initial planning of the 1972 Republican National Convention and began to consider San Diego as a possible site. A memorandum from Higby to Strachan dated April 29, 1971 states that Haldeman discussed the possibility of a San Diego convention with California's Lt. Governor Ed Reinecke. The memorandum states that Reinecke would, as a result of his discussion with Haldeman, cause a proposal for San Diego to be the convention site to be made to the Republican National Committee.

Page

22.1 Memorandum from William Timmons to H. R. Haldeman, April 20, 1971 (received from White House)..... 425

22.2 Memorandum from Lawrence Higby to H. R. Haldeman, April 20, 1971 (received from White House)..... 426

22.3 Memorandum from Gordon Strachan to H. R. Haldeman, April 21, 1971 (received from White House)..... 427

22.4 Memorandum from Gordon Strachan to H. R. Haldeman, April 23, 1971 (received from White House)..... 428

22.5 Memorandum from Lawrence Higby to Gordon Strachan, April 29, 1971 (received from White House)..... 429

22.6 Memorandum from Gordon Strachan to H. R. Haldeman, May 11, 1971 with attached memorandum from William Timmons to H. R. Haldeman, May 6, 1971, and attached report (received from White House)..... 430

22.7 Memorandum from Robert Odle to Jeb Magruder, May 19, 1971 (received from White House)..... 448

22.8 Memorandum from Robert Odle to William Timmons, May 20, 1971 (received from White House)..... 454

22.9 Letter from Ed Reinecke to William Timmons, June 2, 1971 (received from White House)..... 455

Page

22.10 Memorandum from Robert Odle to Jeb Magruder, June 15, 1971 (received from White House)..... 456

22.11 Memorandum from Gordon Strachan to H. R. Haldeman, June 23, 1971 with attached memorandum from Robert Odle to Jeb Magruder, June 22, 1971, and attached memorandum from William Timmons to H. R. Haldeman, June 21, 1971 (received from White House)..... 458

22.12 Memorandum from Gordon Strachan to H. R. Haldeman, June 25, 1971 (received from White House)..... 464

22.13 Memorandum from Gordon Strachan to H. R. Haldeman, June 29, 1971, with attached memorandum from Jeb Magruder and William Timmons to John Mitchell and H. R. Haldeman, June 26, 1971, and attachments (received from White House)..... 465

22.1 WILLIAM TIMMONS MEMORANDUM, APRIL 20, 1971

THE WHITE HOUSE

WASHINGTON

April 20, 1971

CONFIDENTIAL/EYES ONLY

MEMORANDUM FOR: H. R. HALDEMAN 003514

FROM: WILLIAM E. TIMMONS

SUBJECT: '72 GOP Convention Site

Dick Capen will not be able to go with me to San Diego for a look-see at that city as a possible convention site until May 1st. He is closing out his work at Defense, packing up, etc. He reports to San Diego on the 1st anyway and asks if that is too late.

What do you think?

Check Mitchell.

Also, I would like a short session with you about this mission. Is it undercover work at this point? Who pays for the trip? Should I solicit information from the RNC?

Yes

No.

CONFIDENTIAL/EYES ONLY

MEMORANDUM 22.2 *LAWRENCE HIGBY MEMORANDUM, APRIL 20, 1971*

THE WHITE HOUSE

WASHINGTON

April 20, 1971

Border
Please check this out & report to H.
If any questions see me.
L.

MEMORANDUM FOR: H. R. HALDEMAN

FROM: L. HIGBY L

SUBJECT: Investigation of San Diego as Possible Convention Site

As a result of your discussion with the Attorney General ~~on~~ San Diego as a possible Convention site, you may want to follow-up in talking to Dick Capen.

003513

You will recall that Capen was mentioned as one of those individuals who perhaps along with Timmons, would informally check out San Diego as a possibility as the Convention site.

Capen is leaving DOD effective May 1 and plans on staying there up to that date.

I don't know if this causes a problem or not, but there was an indication in your conversation that some preliminary decisions needed to be made by May 1.

Gordon good pt.

My suggestion would be that I call Bill Timmons and explain the situation and have him informally talk to Capen to see if they couldn't get away for a few days -- perhaps a weekend before May 1 and explore this situation.

4/20 – Timmons will talk to Capen, go d'coon and prepare memo for H.

→ H memo

H → Gilbert – cover w/ Timmons

Timmons – 3/600

MEMORANDUM *22.3 GORDON STRACHAN MEMORANDUM, APRIL 21, 1971*

THE WHITE HOUSE

WASHINGTON

April 21, 1971

CONFIDENTIAL

MEMORANDUM FOR: H. R. HALDEMAN 003515

FROM: GORDON STRACHAN G

SUBJECT: Investigation of San Diego as Possible Convention Site

After your discussion with the Attorney General about San Diego as a possible convention site, Bill Timmons was asked to make a very quiet informal survey with Dick Capen of DOD. They will go to San Diego some week-end soon, possibly when the President goes to San Clemente.

Their expenses will not be paid by the RNC, but through Sloan. Upon Timmons' return he will prepare a report.

MEMORANDUM *22.4 GORDON STRACHAN MEMORANDUM, APRIL 23, 1971*

THE WHITE HOUSE

WASHINGTON

April 23, 1971

CONFIDENTIAL

MEMORANDUM FOR: H. R. HALDEMAN

FROM: GORDON STRACHAN

SUBJECT: 1972 GOP Convention Site

Recently you and the Attorney General discussed San Diego as a possible site for the 1972 GOP Convention. 003512

Bill Timmons is ready to make a very quiet, informal survey. Timmons could leave immediately. If Dick Capen of DOD were to join Timmons, the trip would have to be made after May 1.

Their expenses could be paid by the Citizens Committee and not the RNC.

Recommendation:

Timmons and Capen should go to San Diego May 1-2, ~~while the President is in San Clemente.~~ ~~The Citizens Committee~~ Kalmbach would pay their expenses.

Approve_____ Disapprove_____

Comment_____

So told
OK call
Alexander -

MEMORANDUM 22.5 LAWRENCE HIGBY MEMORANDUM, APRIL 29, 1971

THE WHITE HOUSE

WASHINGTON

To Timmons 4/29 6P

April 29, 1971

MEMORANDUM FOR: GORDON STRACHAN

FROM: L. HIGBY L

003511

With regard to the attached memo on the 1972 GOP Convention site -- Haldeman raised this subject the other day in a meeting with Ed Reinecke -- Lt. Governor of California and Gillenwater of his office. As a result of that meeting Gillenwater is going to cause a proposal to be made to the RNC.

Timmons should get in touch directly with Gillenwater and see exactly what is happening here and then let you know. In either case, there is probably not a need now for an immediate trip as a result of this Haldeman meeting.

Attachment

To JSM 4/30
Research file dates early
to prevent Convention in Sept.

THE WHITE HOUSE

WASHINGTON

May 11, 1971

003442

MEMORANDUM FOR: H.R. HALDEMAN

FROM: GORDON STRACHAN

SUBJECT: Timmons' Investigation of San Diego as 1972 Convention Site

Bill Timmons, who heads the Attorney General's task force on the convention, talked with Dick Capen and Ed Gillenwaters about San Diego as a possible convention site. Timmons considered it very important that he make a quick survey of the city. He did this last week and submitted the attached report. The report is well done and includes the following points:

1. San Diego will only accept the convention after Labor Day. Some states require Presidential nominees to file before September 1.

Dean has asked Rehnquist at Justice to research this problem and the legal alternatives.

2. GOP Factions pose a problem. Timmons believes the Finch and Reagan forces will have a bloodletting confrontation. Finch has apparently had Al Harutunian make tentative convention arrangements in San Diego, using Billy Graham's name.

3. San Diego has some disadvantages ($400,000 bid instead of $800,000; barely adequate hotel facilities; and a demonstration potential), but Timmons believes these could be solved and that "San Diego would make an excellent location for the next convention".

THE WHITE HOUSE

WASHINGTON

003443

CONFIDENTIAL/EYES ONLY

May 6, 1971

MEMORANDUM FOR: H. R. HALDEMAN

FROM: WILLIAM E. TIMMONS

SUBJECT: '72 Convention Site

I spent two days in San Diego this week surveying the city as a possible site for the 1972 Republican National Convention. A report on my findings is attached in Tab A.

There has been no effort in this paper to compare San Diego with other possible locations. Also, there is no evaluation given to California in relation to the possibility of Reagan or McCloskey contesting the nomination or weight given to Vice Presidential politics. Both of these factors must be considered at some point however in the decision process.

I believe San Diego would make an excellent location for the next Convention. However, there are two major obstacles and three minor problems:

TIMING: It is absolutely impossible for San Diego to host the Convention before Labor Day, September 4th. The city's hotel rooms are always committed during August by tourists and there is an unwillingness to lose regular customers. Also, the Hall is booked by the International Machinists Union September 3-17 and by the Fleet Reserves from September 17-21st. If these two organizations were willing to reschedule their conventions, even the early September date presents a legal difficulty for us. A number of states require Presidential candidates to file by late August in order to get on the November ballot. In 1968 I'm told the Democrats ran into this problem in several states but were able to get waivers. I am having two groups independently research the various state laws and possible waivers. Unless this is satisfactorily resolved, San Diego will not offer a bid. I'll keep you posted on the results of my investigation.

FINANCES: The RNC estimates it will spend $800,000 to run the convention. Bidding cities are requested to pay the Committee this amount, part of which can be in services, rents, etc. It will be impossible for San Diego to raise this kind of money. They talk of only $200,000, but if they are really in the running I feel the city can come up with

003444

FINANCES: (continued)

$400,000 with the remainder coming from RNC and California GOP sources. If the timing problem can be resolved, I will make the necessary contacts to work on the financial bid.

HOUSING: The lack of excess first class rooms and available parlors present a minor problem. By stretching, San Diego can commit sufficient rooms for the event, I feel.

CONVENTION HALL: The RNC requires 150,000 square feet of work space in - or adjacent to - the Convention Hall. This is mostly for media. The San Diego Sports Arena has only about 30,000 square feet of off-floor work space. Therefore, a temporary building with approximately 120,000 square feet will have to be erected. This can be done.

GOP FACTIONS: If San Diego is chosen as the convention site, we can expect a blood-letting confrontation between the Finch and Reagan forces for control or at least public exposure. The battle lines are already forming, and I suspect the situation could become bitter. NOTE: Al Harutunian apparently has tentatively reserved the Sports Arena for mid-September under the name of Billy Graham. It is widely believed he is acting as an agent for Finch. I have information that Bob will be in San Diego this week-end and may discuss the convention. While I did not see Harutunian, he has learned of my trip and will undoubtedly spread it around. I suspect Dick Capen told him, although this is just a guess.

San Diego will definitely make a formal bid for the 72 convention. I am obligated to report to them if we can consider a September event. The Site Committee of the RNC will have to visit San Diego, but Bob Dole tells me he can arrange for a favorable report on any city the President wants.

003445

A REPORT ON SAN DIEGO AS A POSSIBLE 1972 REPUBLICAN NATIONAL CONVENTION SITE

MAY 6, 1971

22.6 ATTACHMENT TO WILLIAM TIMMONS MEMORANDUM

CONTENTS

I. GENERAL INFORMATION

II. POLITICAL

III. HOTELS

IV. CONVENTION HALL

V. SECURITY

VI. POINTS OF INTEREST

VII. CONTACTS

VIII. EXHIBITS

003446

22.6 ATTACHMENT TO WILLIAM TIMMONS MEMORANDUM
GENERAL INFORMATION

San Diego has a county population of 1,357,854 (up 31.4% from 1960 makes it one of the fastest growing areas in the nation) and is the third largest city (700,000) in the West.

August is the hottest month with the average maximum-minimum range 78.0° - 65.5°, and in September it is 77.6° - 62.2°.

San Diego is wholesome, outdoors, casual and slow. There is little urban blight and no poverty areas evident in the hotel-convention sections.

San Diego is a short 20 minute helicopter ride from the President's Western White House.

003447

Excellent new downtown airport, serviced by eight airlines. American, United, National and Delta provide direct flights from eastern cities. Other intra-state carriers. Over 16,000 commercial airline seats daily into and out of San Diego. Major airlines usually add on special convention flights from big cities.

Downtown railroad depot. Three Santa Fe trains daily, connecting with Union Pacific.

Over 200 Greyhound and Continental busses scheduled daily.

Superb highways: Interstate 5 north; Interstate 8 east; U.S. 395 northeast; U.S. 94 east and Interstate 805 north (inland) under construction. A number of other major arteries are four-lane and in good condition.

San Diego has an abundance of gourment restaurants and cocktail lounges.

Home of the San Diego Chargers football team, Padres baseball club, Rockets basketball squad and Gulls hockey team.

San Diego has three daily newspapers: Union (morning Copley), Tribune (evening Copley) and the Independent (afternoon, run by a Republican). The Los Angeles Times has substantial circulation also.

There are three local television stations: KOGO-TV, channel 10 NBC, owned by Time-Life; KFMB, channel 8 CBS, run by a Republican; and XETV, channel 6 ABC. Some areas pull Los Angeles stations. Additionally, there are ten radio stations servicing the San Diego area.

GENERAL INFORMATION (continued)

The major industries are: US Navy, tourism, agriculture, aerospace, ship-building, fishing and research (oceanography, nuclear energy and medicine).

Colleges are outlined in the section on security.

Less than 5% of the population is negro and about 3% are Mexican-Americans.

003448

22.6 ATTACHMENT TO WILLIAM TIMMONS MEMORANDUM

POLITICAL

California will have the largest electoral votes (45) of any state in 1972 and more delegate strength (96) than any other state in the Convention.

Recent Votes in San Diego County

1964	Goldwater	50.3%		
1968	Nixon	56.3%		
1970	Murphy	57.0%	Wilson (R)	83,932
			Hostetter (D)	28,659
			Van Deerlin (D)	63,225
			Kuhn	22,839

003449

San Diego appears to be a more loyal, regular Republican area than Los Angeles (conservative) or San Francisco (liberal). The Women's GOP Federation is quite active but the Young Republicans, and College Republicans, are not particularly well organized. UROC and CRA have some strength but are not significant factors.

The Governor and Lt. Governor are Republicans and are publicly committed to the President's renomination.

There are three House Members representing parts of San Diego County. They are John Schmitz (R), Bob Wilson (R) and Lionel Van Deerlin (D).

The three State Senators are Clair W. Burgener, Jack Schrade and James R. Mills.

The five State Assemblymen are Pete Wilson, Wadie Deddek, Richard Barnes, Pete Chacon and John Stull.

The San Diego County Board of Supervisors is non-partisan.

The Mayor of San Diego is Frank Curran, a Democrat. The City Council is non-partisan. It is expected that Pete Wilson will oppose Curran in this year's mayorial race.

The City Manager -- Walter Hahn -- is non-partisan and well respected.

41-111 O - 74 - 29

POLITICAL (continued)

San Diego GOP County Chairman is retired Admiral Leslie Gehres. Republican National Committeewoman Eleanor Ring is a local resident as is the State GOP Executive Committee Vice Chairman Gordon Luce. Luce has a full-time GOP staff assistant Jan Anton.

A number of identified Nixonites reside in the San Diego area. Among them are Al Harutunian, Bill Evans, Arnhold Smith, Leon Parma, Gaylord Parkinson, Bob Wilson, Dick Capen and Jim Copley.

003450

22.6 ATTACHMENT TO WILLIAM TIMMONS MEMORANDUM

HOTELS

The Republican National Committee requires 18,000 sleeping rooms and 1,000 parlor suites in first class hotels.

There will be 1,346 delegates and a like number of alternates at the '72 convention. The largest delegations are:

California	96
New York	88
Pennsylvania	60
Illinois	58
Ohio	56
Texas	52
Michigan	48
Florida	40
New Jersey	40
Massachusetts	34
Indiana	32
North Carolina	32
Missouri	30
Virginia	30

003451

As a rule of thumb, the ratio of rooms required for a state is four to each delegate.

The Greater San Diego area has 23,149 hotel and motel rooms. 17,974 of these are within 20 minute drive of the Convention hall (Note: All rooms cannot be blocked). Most are first class accommodations and prices are reasonable. There are only about 300 parlors available, however. Virtually all the big hotels have private meeting rooms.

The largest hotels are:

Royal Inn at Wharf	625	(10 min.)
Town & Country Hotel	600	7 "
Sheraton Hotel	500	10 "
El Cortez	475	10 "
U.S. Grant	400	10 "
Le Baron	400	7 "
Del Coronado	400	20 "
Sheraton Inn	345	10 "
Hilton Inn	325	5 "
Bahia Hotel	323	5 "
Hyatt Lodge Hotel	315	7 "
San Diego Hotel	300	10 "
Hanalei Hotel	273	7 "

HOTELS (continued)

Islandia Hotel	266	5 min.
Catamaran Hotel	254	10 "
Pickwick	250	10 "
Vacation Village	239	5 "
Plaza International	230	7 "
Westgate Plaza	229	10 "
Master Hosts Inn	225	7 "
Holiday Inn of Mission Valley	225	7 "

7,199 rooms

If the Convention goes to San Diego, the Town & Country Hotel is probably best for the RNC headquarters and can also house several delegations. The Hilton Inn appears to be ideally located with adequate facilities for the Nixon campaign organization and the White House staff (in addition to a friendly delegation). However, there may be some political pressure for the Nixon staff to return to Bahia at Mission Bay.

003452

22.6 ATTACHMENT TO WILLIAM TIMMONS MEMORANDUM

CONVENTION HALL

The four year old sports arena meets most of the qualifications as a site for the 1972 Republican National Convention.

Maximum seating is 15,000 which is the minimum requirement by the RNC. There are no box seats, but they can be constructed. Parking is for 6,000 cars (33 acres). (The physical arrangement is good with ample room for delegates, alternates and press to have seats on the principal floor.)

The RNC needs 150,000 square feet of work space for various support functions, including media and press. The arean unfortunately has only 30,000 square feet of space suitable for work area, therefore a 120,000 square foot temporary building will have to be constructed adjacent to the convention hall. This will eliminate some of the parking space.

The Arena has lighting suitable for live color TV, is fully air-conditioned, can meet electricity and power requirements and has a quality public address system.

003453

SAN DIEGO STADIUM: Superb new stadium for professional football and baseball. The President has visited the stadium. Capacity is 50,000 in permanent seats with another 10,000 capability in folding chairs on the turf. Could be used for the President's acceptance speech on final night since evening weather should be good.

SAN DIEGO COMMUNITY CONCOURSE: This new downtown facility consists of a convention hall, exhibit hall, theatre and garage. The two adjacent auditoriums can seat 3,000 and 5,000 -- and can cater for 3,000. This would be an ideal location for the RNC Chairman's Dinner, city's traditional press reception, GOP GALA, and other similar events not conducted in the Sports Arena.

SECURITY

There are two security aspects of the 1972 national convention: Presidential and facilities.

San Diego is less than one-half hour by helicopter from the Western White House. Naval base can provide communications support for Presidential travel.

The Sports Arena is located in an area isolated from other buildings and centers of activity. The Arena has almost all the space from Interstate 5 (north), Sports Arena Blvd. (south), Interstate 8 (East) and Midway Drive (west). There are three approaches to the Hall. A six foot fence is on three sides of the arena.

The San Diego Stadium is six miles north of downtown and is a secluded area about one mile square.

003454

The city's police force is reputed to be one of the nation's best. There is excellent cooperation between the California State Highway Patrol, the County Sheriff's Office and the San Diego Police. Additionally, the U.S. Naval Stations have security forces which could be mobilized in an emergency.

San Diego has had no major riots but several peace marches. There is a radical element at the new University of California at San Diego (LaJolla) campus. San Diego State has a large moderate student body and the Catholic University at San Diego is small and conservative by modern standards. Cal Western University and U.S. International College have about 3,000 students each.

Based on 1971 facts:

-- San Diego State has 26,000 students and will open its fall term on September 20th.

-- University of California at LaJolla has 6,000 and starts Sept. 28th.

-- University of San Diego has 1,550 kids and commences fall studies on September 1st.

Therefore, it would appear that outside of summer students, only "conservative" USD will be open if the Convention is held soon after Labor Day.

Because of the climate, beaches and distance from Los Angeles, San Francisco and Berkeley, San Diego could be an ideal location for California students, Los Angeles blacks and Chicano activists to have a last summer "Fling."

POINTS OF INTEREST

San Diego Zoo - world's largest
Balboa Park - 1,400 acres of gardens, museums, etc.
Sea World - giant oceanarium
Harbor - beautiful; all kinds of ships and boats
Palomar - observatory; world's largest telescope
Mexico - Tijuana is 15 minutes away; bullfights, Jai Alai
Missions - Old Spanish style with tours
Golf - 66 golf courses, some lighted, Torrey Pines is most famous
Fishing - both pier and deep sea
Mission Bay Park - 4,600 acre water sports playground: beaches, boat rentals, tennis, water skiing, etc.
Tropical Isles - Shelter Island, Harbor Island and Coronado
Ocean beaches - 70 miles of good surf
Racing - Caliente and Del Mar
LaJolla - jewel-like community
Old Globe Theatre - outstanding players and performances
U.S. Navy - Big Navy installations; ship tours
Desert - Anza Borrego Desert State Park is about 40 miles east
Disneyland - 90 minute drive
San Clemente - 60 minute drive
Salk Institute - medical research
Scripps Clinic - medicine

003455

22.6 ATTACHMENT TO WILLIAM TIMMONS MEMORANDUM

CONTACTS

Frank Curran, Mayor of San Diego

Walter Hahn, City Manager, San Diego

Robert Gadbois, President of Convention and Visitors Bureau

J. B. "Ace" Simmons, Convention Manager

Lester Land, General Manager, Sports Arena

003456

Robert Breitbard, President, Sports Arena

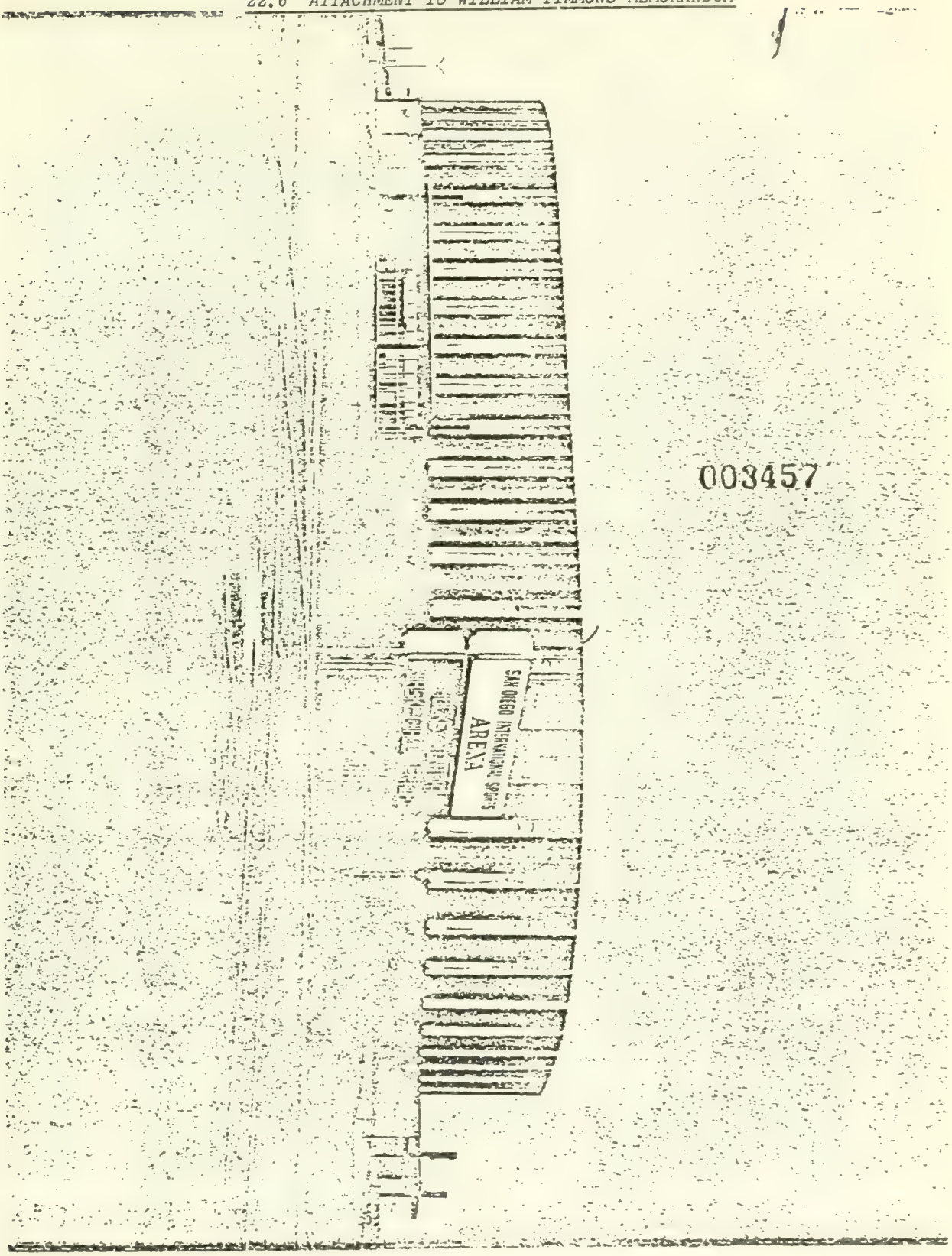
William Harrington, Washington Representative for City of San Diego

Ed Gillenwaters, Director of Commerce, State of California

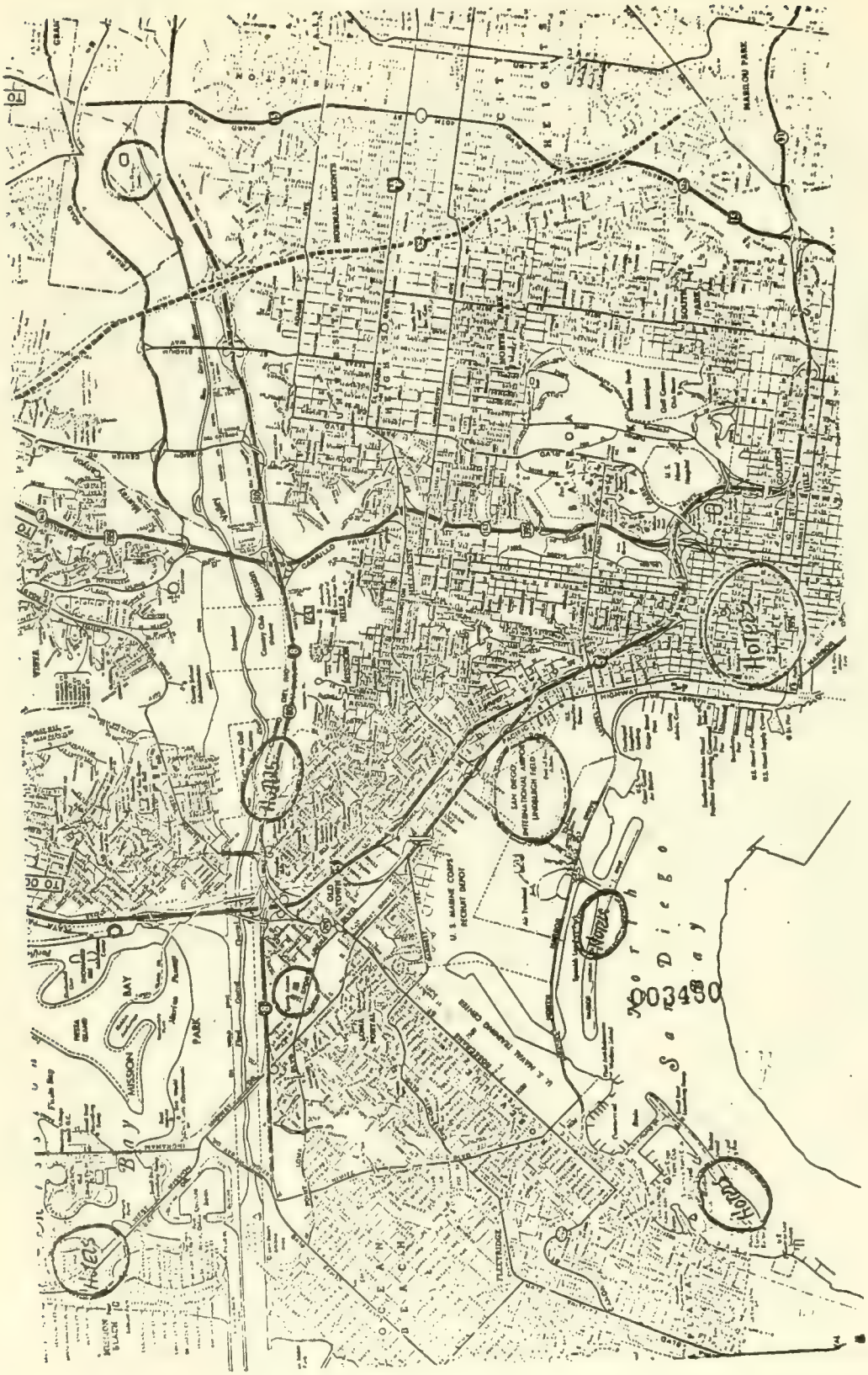
Robert Smith, Chairman of Tourism Commission, State of California

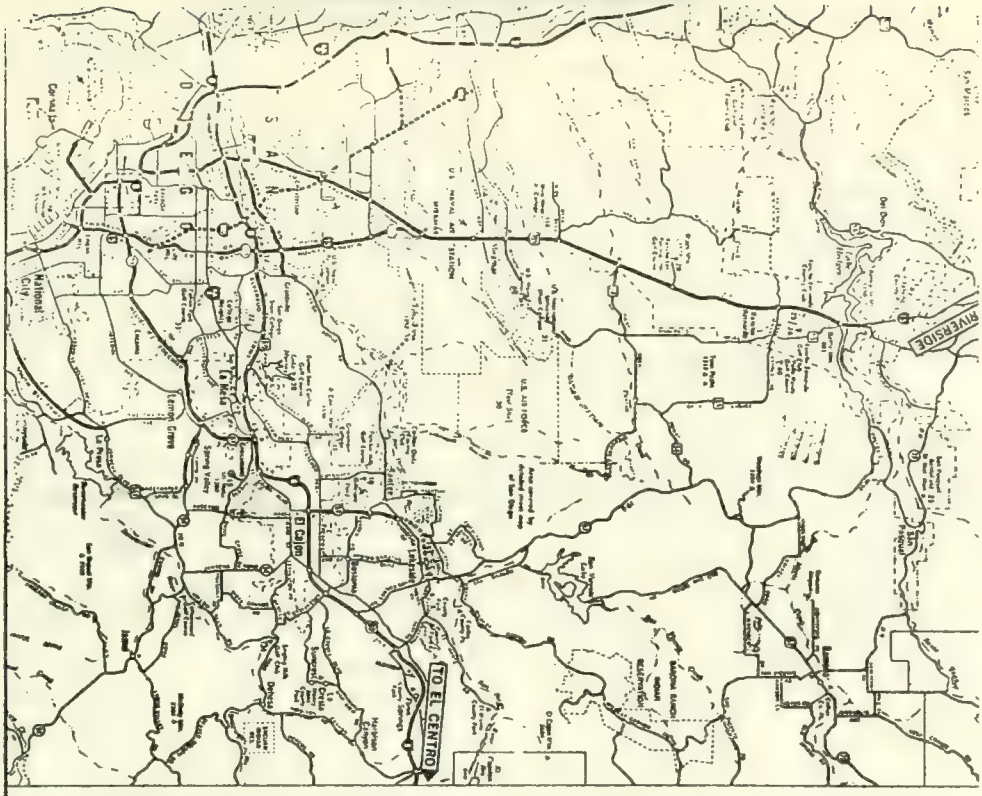
Gordon Luce, Vice Chairman, Republican State Executive Committee

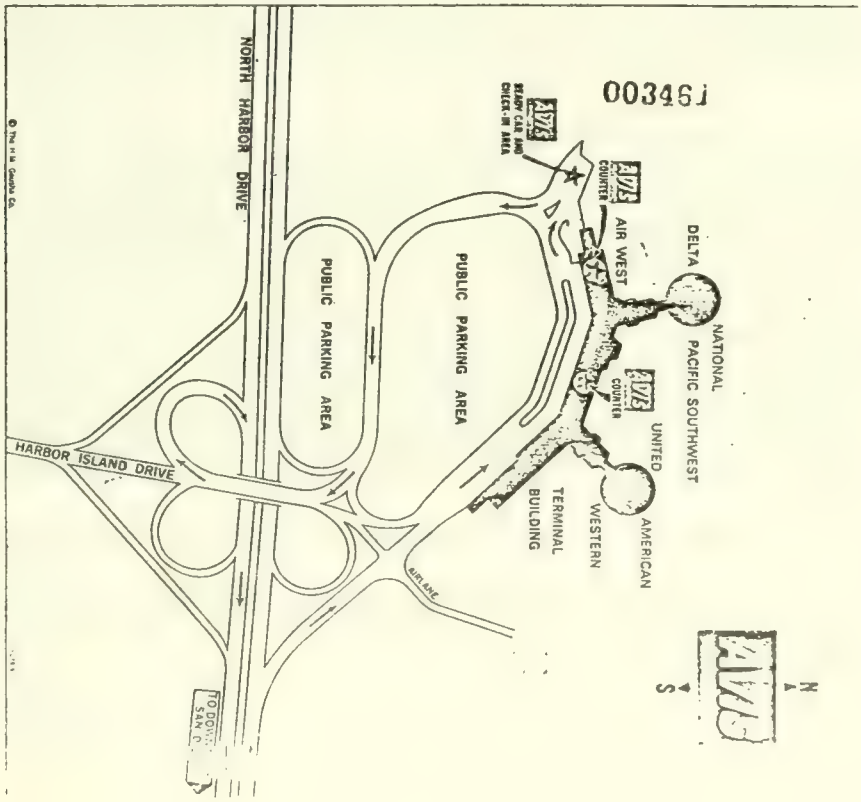
Richard Capen, Vice President of Copley Press



003457


San Diego Bay
Hotels
Hotels
Hotels
Hotels
MISSION BAY PARK
MISSION BEACH
PACIFIC BEACH
OLD TOWN
U.S. MARINE CORPS RECRUIT DEPOT
SAN DIEGO INTERNATIONAL AIRPORT LINDBERGH FIELD
NORTH ISLAND NAVAL AIR STATION
NAVAL OCEAN SYSTEMS CENTER
NAVAL AMPHIBIOUS BASE
NAVAL TRAINING CENTER
NAVAL HOSPITAL
NAVAL SUBMARINE BASE
NAVAL SUPPLY CENTER
NAVAL STATION
NAVAL AIR STATION
NAVAL AMMUNITION DEPOT
NAVAL ELECTRONICS LABORATORY CENTER
NAVAL OCEAN SYSTEMS CENTER
NAVAL AIR DEVELOPMENT CENTER





AVIS RENT A CAR LOCATIONS

Numbers correspond with numbered locations on San Diego and

00346J

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT

WASHINGTON

SUITE 272
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 333-0920

May 19, 1971

CONFIDENTIAL

003411

MEMORANDUM FOR: MR. JEB S. MAGRUDER

FROM: ROBERT C. ODLE, JR.

The following is a "status report" of some of the projects on which I am working at the present time.

CONVENTION

Bill Timmons, as you know, has taken a very active interest in the convention and has also been serving as chairman of the planning study on the convention. The planning study is divided into two sections: logistics and strategy. At the present time, we are concentrating on logistics, and particularly the convention site.

The RNC Site Selection Committee is the official group which visits the various cities and makes a final recommendation to the RNC (at its July meeting in Denver) as to the convention site. Bill and I feel that we should button down the site as quickly as possible, call in Senator Dole and have him meet with the President to get the President's thinking as to the site, and then have Dole inform Jo Good and other members of the Site Selection Committee of the President's decision. Ideally, the Site Selection Committee should make its recommendation to the RNC well before the Denver meeting, so that we're on record with a site before the Democrats are. If the media is going to push for both parties using the same city, it would be to our advantage to have the Democrats asked to use the site we have selected rather than vice versa. Thus, time is of the essence.

The following cities have bid for our convention:

CONFIDENTIAL

1. Houston. The Site Selection Committee visited Houston and felt the city's desire to have the convention was, at best, lukewarm. Houston officials would not discuss making any sum of money available in return for Houston being the convention site. Nor would Houston give us a commitment on hotel rooms. The Astrodome would be too large for convention sessions, except on the night of the President's acceptance address, but a 15,000 person "Astrohall" might be available. But the reception in Houston was so cool that Chairman Dole and the committee members are reported turned off to the city.

2. Miami. The city will commit $400,000 of the $800,000 which the RNC wants. The convention hall and the hotel space are available. But Timmons feels, and I agree, that it would not be good to go back to Miami -- one of our biggest jobs at the '72 convention will be to make delegates feel important and happy. Since they're not at a convention to really decide who is nominated, we must make certain they have enough to do. And probably 80% of them were at the 1968 convention in Miami and have seen the local sites, visited the places tourists go, etc. And, too, there is the consideration of avoiding dullness by going where we've been before. There is also Miami's oppressive August humidity with which to contend.

003412

3. Chicago. Chicago is the only city which will commit the full $800,000 and Dole and the RNC are reported to be leaning toward the city. There are enough hotels, but they are miles away from the only convention hall available, the International Amphitheater, which is old and in a bad section of the city.

Timmons feels we cannot risk the possibility of a repeat of the Democratic 1968 convention. Should the Mayor tell the police to look the other way one evening, it could be all over for us. If there were demonstrations or violence, we would be roundly criticized by Middle America for selecting Chicago in the first place. My opinion is that $400,000 isn't worth taking a chance on such a risk.

4. San Francisco. Civic officials have promised $300,000 and an improved hotel situation. But the Cow Palace is miles from downtown and very old. Furthermore, the problems with Berkeley and San Francisco State College and the certainty of large scale demonstrations rule out San Francisco in Timmons' eyes, and in mine, too.

Other cities which have been mentioned:

5. Louisville. There has been speculation that Louisville was going to put up a bid and Dole is in the process of checking with Louie Nunn in

this connection. But it is difficult to envision a national convention in Louisville.

6. Saint Louis. The problem here is the almost total lack of GOP office holders and local PN enthusiasm to support a convention. But it might be worth looking into if San Diego doesn't work out and Miami is judged not desirable.

7. Philadelphia. A good convention city, but one which is setting its sights on 1976 and a convention there during the Bicentennial year.

8. Detroit. If the other possibilities don't check out, we should explore this one. Detroit has the best and newest convention hall in the country, and it's smack in the middle of downtown within walking distance of all the hotels. A GOP Governor and Senator would be of assistance and the convention might help Senator Griffin's re-election. Geographical proximity to key midwest states such as Ohio and Illinois would also be a factor. But the real drawing card here is the excellence of the convention facility and its closeness to all the big hotels.

003413

9. San Diego. This is Timmons' favorite and mine too. In terms of all the factors, it would be tops. Bill has visited the convention hall and feels it would be adequate with the addition of temporary working space for the RNC and the media. The hotels are adequate, although the RNC asks for 18,000 first class rooms and San Diego has 23,000 rooms, not all of which are first class. The RNC also wants 1,000 parlors and the city has only 250. Many of the hotels are in the fashionable Mission Bay section of town which we visited after the 1968 Miami convention. The convention hall is close by. The climate is superb. The city has informally offered $200,000 and Bill thinks another $200,000 might be promised, bringing the total to that which Miami has offered. The area's many tourist opportunities would make it interesting for the delegates: the zoo, Balboa Park, Mission Bay, Mexico, water sports, Disneyland, etc. It is easily accessible by air and the airport is downtown.

The problem with San Diego is that the city fathers don't want the convention until after Labor Day. Studies which the RNC and the Justice Department have completed show that a September convention would be too late in terms of meeting state requirements for filing Presidential and Vice Presidential candidacies. Timmons and John Dean are now looking at these studies to determine if a September convention is still a possibility, but at the present time they are 90% certain we cannot go after Labor Day.

Should this be the case, Timmons would discuss informally with San Diego officials the possibility of an August convention there. He feels they might be interested.

At the present time, Jo Good and the Site Selection people are not aware of our activities with respect to San Diego, although they are aware that "White House aides" have visited the city. But it seems that Bob Finch has been in touch with San Diego as well and has had Al Harutunian of San Diego tentatively reserve the convention hall for mid-September allegedly for a Billy Graham crusade. Jo Good has telephoned Gordon Luce of the California Republican party in this connection, but Luce has not told her of the Timmons visit. Thus, it appears that if Jo Good has knowledge of a visit by "White House aides," this would refer to the Finch-Harutunian activities rather than Bill Timmons' visit.

By next week we should have a firm idea of whether a convention in September is at all possible and if not, whether San Diego is interested in an August convention. At that time, some preliminary recommendations should be made as to the convention site.

The Justice Department's report is attached.

PRIMARIES AND FIELD ORGANIZATION 003411

As you know, Harry Flemming is chairman of this planning study and I am serving as project manager. We have met with Harry Dent and explained to him that Flemming will be serving as chairman since he is on the staff here and has time available for this purpose. Dent agrees with this and will serve as a sort of senior advisor to the planning study.

For purposes of your meeting with the Attorney General, Harry Flemming can probably best report in person on the activities and accomplishments of this task force thus far.

CITIZENS COMMITTEE

Although you will be serving as chairman of this study, Tom W. Evans of New York will be a key advisor here. I have met with Tom, have obtained many of the records from '68, and you and I will meet with him next Tuesday in New York. Also, if time permits, we will meet with Don Kendall in New York who Peter Flanigan, after consultation with the Attorney General, has suggested as the person to head up the "Businessmen for" aspect for the Citizens operation.

OFFERS OF ASSISTANCE 003415

Now that our organization is official, we are receiving many offers of help from people throughout the country who want to assist in the President's re-election campaign. Letters and resumes are being received at the RNC, the White House, and here. We have set up a system whereby letters to the RNC are acknowledged by Chairman Dole and forwarded to us and letters received at the White House are acknowledged by Harry Dent and turned over to us. Letters received here are answered with letters signed by you, Harry Flemming, or me. There is nothing which turns a person off faster than having his offer of assistance ignored and we are making certain that each letter has a personal response. The RNC is presently designing for us an enclosure to be sent out with our letters which gives a brief description of the President's position on some of the key issues and suggests ways in which people can be of help to the campaign right now, e.g., "take every opportunity to talk up the President," "make his position known," etc.

A filing system has been set up whereby offers of assistance are placed in categories from which they later can be retrieved. Some of the major divisions are Citizens, Primaries and Field Organization, Central Office Staff, Volunteer, Secretarial. Later, these can be broken down by state and the names on file forwarded to our operatives in each state.

OFFICE

All the necessary office supplies and equipment are now on hand and the office is operational. The group hospitalization policy goes into effect June 1 and we are covered for theft, fire, liability, etc. A travel accident policy has been purchased to protect the families of those men on our staff who might be severely injured or accidentially killed while traveling on behalf of the Committee. The telephone system has worked out well thus far.

A system has been set up whereby anyone ordering office supplies, furniture, equipment, etc., gives a requisition to one of the secretaries. All requisitions must be approved by me, thus centralizing this responsibility and saving money. The secretaries check with me before taking time off so that we don't, for example, find ourselves with half a staff just before a holiday. Staff meetings are regularly being held mid-week.

OFFICE -- continued

Our C.P.A., Pat Buchanan's brother, is doing a conscientious job with the payroll, withholding forms and reports, etc., although I'm trying to get his prices down a bit.

At the earliest opportunity, I'm going to try to chart out what our physical requirements will be for 1972 in terms of office space. A large office building is now going up across the street from us and is located where our original RN operation was headquartered in Washington in 1968 -- I will check at a later date to see if we might rent space in this building when it is completed -- hopefully at a reduced rate.

003416

Tim

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT

WASHINGTON

SUITE 272
1701 PENNSYLVANIA AVENUE N W
WASHINGTON D C 20006
(202) 333-0920

May 20, 1971

CONFIDENTIAL/EYES ONLY

MEMORANDUM FOR: MR. WILLIAM E. TIMMONS

FROM: ROBERT C. ODLE, JR. RCO

003597

Attached are the two reports from Justice relating to the convention which your office requested.

Also attached is a section of a memorandum I prepared for Jeb's meeting with the Attorney General which deals with the convention.

Let's discuss where we go from here at your convenience.

Attachments

CONFIDENTIAL/EYES ONLY

Tim

State of California
LIEUTENANT GOVERNOR'S OFFICE
SACRAMENTO 95814

ED REINECKE
LIEUTENANT GOVERNOR

June 2, 1971

JUN 11 1971

PERSONAL & CONFIDENTIAL

Mr. William Timmons
Assistant to the President
for Congressional Affairs
The White House
Washington, D. C. 20500

003651

Dear Bill:

Thank you for taking time out to visit with us last week. I'm still hopeful our project will flower and, with the guidelines you provided well in mind, will keep you posted of our progress.

I had the opportunity to visit with Bob Dole and Attorney General Mitchell by phone prior to leaving for California. Dole mentioned he might be out here within a matter of weeks, at which time he and I tentatively plan to take an unofficial swing through San Diego.

Ed Gillenwaters received the enclosed San Diego Union and San Diego Tribune (both Copley newspapers) articles, but in my view that doesn't seriously deter the effort.

Sincerely,

Ed

ED REINECKE

Enclosure

P.S. Have talked with them by phone since — if we can just keep the publicity down, I think we'll make it. E.R

22.10 ROBERT ODLE MEMORANDUM, JUNE 15, 1971

CONFIDENTIAL

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT

WASHINGTON

SUITE 272
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 333-0320

June 15, 1971

MEMORANDUM FOR: MR. JEB S. MAGRUDER

FROM: ROBERT C. ODLE, JR.

003487

As we discussed yesterday, there will be four "decision papers" for the Attorney General and Mr. Haldeman in the very near future relating to the convention. These are as follows:

1. RNC Committees. Chairman Dole will appoint four major pre-convention committees at the July RNC meeting in Denver. Bill Timmons, Harry Flemming, and I have come up with suggested members for each. After their names have been carefully re-checked, they must be approved by the Attorney General. Timmons can then communicate them to Dole. You will have the decision paper this week for the Attorney General.

2. The DO Committee. The RNC's Delegates and Organizations Committee met in January to discuss convention procedures, and last weekend to discuss convention delegate selection mechanisms. We have a report on the first meeting and Timmons and I agree with all the DO Committee's recommendations except for one recommendation to the Rules Committee (which will be appointed in July). I am meeting this afternoon with Mrs. Stanley Ginn of Missouri, Chairman of the DO Committee, to be filled in on last weekend's activities. I will go over their most recent recommendations with Timmons and we will then prepare a decision paper in this area noting those recommendations with which we agree and those with which we disagree. This paper should be ready this week or next at the latest.

3. Site. Jo Good (with whom I talked yesterday) and the Site Committee are in San Diego this week. After the Committee returns, Timmons and I can sound out Dole and Good. Assuming we continue to favor San Diego, a decision paper will then go to the Attorney General and Mr. Haldeman; assuming their concurrence thence to the President; and at that point the President's decision would be communicated to Dole who would communicate it to the Site Selection Committee. The Site Committee makes its formal recommendation to the RNC meeting in Denver. However, I think we will recommend in our decision paper that the "decision" by the Site Committee be publicly announced ASAP so as to beat the Democrats. Timing on this paper for the Attorney General: Next week.

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CONFIDENTIAL

4. Format. The Arrangements Committee (to be appointed in July) and its eleven sub-committees handle everything from housing to the convention program. Shortly we will call together our convention task force to kick around ideas on the format so that we can get from the Attorney General approval on some very preliminary guidelines in this area which can be used to properly orient the Arrangements Committee. The paper should be ready by July 5.

I am sending a copy of this memo to Bill Horton to assist him in the chart he is preparing for us.

cc: Mr. William L. Horton
Mr. Gordon C. Strachan
Mr. William E. Timmons

003488

CONFIDENTIAL

THE WHITE HOUSE

WASHINGTON

June 23, 1971

MEMORANDUM FOR: H.R. HALDEMAN

FROM: GORDON STRACHAN G

SUBJECT: 1972 Convention Site

Magruder will meet the Attorney General today and discuss memorandum attached at Tab A concerning the RNC Site Committee's visit to San Diego.

To summarize:

003345

1. The Site Committee found the same faults Bill Timmons' noted in his May 6 memorandum (limited office space at the convention hall and barely adequate hotel accomodations);

2. The local politicians are indifferent, but the State officials, especially Ed Reinecke, are enthusiastic.

3. The San Diego bid is $500,000 in cash and $1,000,000 in inflated price services. This excellent bid is considered primarily the work of Reinecke and Magruder will suggest that the Attorney General call Reinecke and thank him.

4. San Diego is the favored site of the Attorney General's task force, though Chicago, Miami, and Louisville are still under serious consideration by the Site Committee.

5. Dole, Timmons, and Magruder believe the Convention Site Committee's request to see the President should be denied. Rather, Timmons should see the President, get his decision, relay it to Dole, and have Dole program the Site Committee to recommend formally to the President and announce to the media the location of the 1972 RNC Convention.

No - I should

6. A formal decision paper will be presented to you and the Attorney General when San Diego submits its formal bid, hopefully this week.

On a related matter, Timmons submitted the memorandum attached at Tab B concerning the number of White House Staff who would be attending the convention. Timmons believes all commissioned personnel (approximately 50) are "entitled to be present whether or not they are actively engaged in the Convention."

The following are the options of which I recommend number two.

1. All commissioned personnel attend_____

2. Only those Staff who are contributing, whether commissioned or not_____

3. All male Staff down through Staff assistant level (150)_____

Wait a bit. To Timmons 6/26

003346

22.11 ROBERT ODLE MEMORANDUM, JUNE 22, 1971

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT

WASHINGTON

SUITE 272
1701 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006
(202) 333-0920

June 22, 1971

CONFIDENTIAL

MEMORANDUM FOR: MR. JEB S. MAGRUDER

FROM: ROBERT C. ODLE, JR.

SUBJECT: 1972 CONVENTION SITE

003348

The RNC's Convention Site Committee has now returned from San Diego, thus completing its series of visits to all the cities which have bid for the 1972 Republican National Convention. The Committee was not as impressed with San Diego as we hoped it would be, citing the lack of office space for the media and the RNC at the convention hall as the main drawback. Also, some political officials in the city, chief among them the mayor, either suggested that the city did not want the convention, or were at best indifferent to the prospect of getting it. On the other hand, business leaders and state officials, led by Lieutenant Governor Ed Reineke of California, were very enthusiastic and members of the Site Committee reacted favorably to these people.

Bill Timmons reports that his contacts in California tell him the city is now offering $400,000 in cash and approximately $600,000 in services bringing the total offer to approximately $1,000,000. However, the city is putting very high pricetags on the services, so in reality the figure might be more like $800,000. The final bid is being prepared this week in San Diego and should be received by the National Committee at the end of the week -- we will obtain a copy of it. It is our understanding that in this bid, the city will offer to construct a building adjacent to the convention hall which can house offices for the media and also for the RNC. San Diego will donate the use of the convention hall for as long a time as is needed to ready it for the convention, and also for the convention sessions.

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Incidentally, San Diego Democrats are reported to be upset that the city did not bid for the Democratic convention and therefore San Diego has decided to put in a pro forma bid for the Democratic convention.

It also should be noted that the Site Committee believes the list of cities under serious contention is now down to San Diego, Miami, Louisville, and Chicago. The committee has ruled out Houston because it has not expressed a real interest in the convention and has refused to make a firm offer of cash and services. San Francisco was ruled out because the committee fears possible problems with the nearby campuses and does not feel the convention hall and hotel situation is as good as it is in other cities.

In the meeting of our convention strategy task force on Friday, San Diego emerged as the very clear favorite, followed by Houston. There was no support for any of the other cities. Those attending that meeting were Pat Buchanan, Bill Safire, Dick Moore, Harry Dent, Len Garment, Don Rumsfeld, and Bill Timmons. Dwight Chapin, Fred La Rue, and Frank Shakespeare were out of town. In addition to favoring San Diego, the task force agreed that the convention should begin the week of August 21, 1972, and should be a three day convention.

003349

Jo Good told me today that members of the Convention Site Committee are in Washington this week and that she would like Chairman Dole, Fred Scribner, and the vice-chairman of the committee to meet with the President later this week or next week to review with him the thoughts of the Site Committee, so that the President might be informed of everyone's views before making up his mind. I have advised Bill Timmons and Gordon Strachan of this, and the three of us have agreed that the following strategy should be employed rather than having the committee see the President. Also, Timmons tells me that Dole agrees with him that we should pursue the following scenario:

As soon as the bid from San Diego comes in, we (Timmons, Magruder, Odle) will examine it. If our inclination is still to go with San Diego, I will prepare a decision paper for the Attorney General and Mr. Haldeman. Assuming their concurrence, we will then request that Timmons discuss with the President his views on all the cities in contention for the convention site and our recommendation that we go to San Diego. Assuming the President concurs with this choice, Timmons would then talk with Dole and communicate the President's decision to him. Dole would talk with the members of the Site Committee regarding this and at some future point in time (next

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week or the week after), either Dole by himself or Dole with the other members of the Site Committee would meet with the President and announce to him their decision that the convention go to San Diego. The President would tell the Site Committee that he concurs with their recommendation that the convention be held there. Members of the Site Committee could then go into the Briefing Room and announce to the media that they had recommended to the President that the convention be held in San Diego, that the President had approved their recommendation, and that they hoped the Republican National Committee would approve the recommendation in Denver on July 23. This would put us publicly on record as having chosen a convention site before the Democrats.

If the general strategy as outlined above is approved, we will proceed as suggested with the initial decision paper.

Approve _____ Disapprove _____

Comments _____

003350

bcc: Mr. Gordon C. Strachan (for Mr. Haldeman's approval and concurrence if necessary)

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22.11 WILLIAM TIMMONS MEMORANDUM, JUNE 21, 1971

THE WHITE HOUSE

WASHINGTON

June 21, 1971

MEMORANDUM FOR: H. R. HALDEMAN

FROM: WILLIAM E. TIMMONS

SUBJECT: '72 Convention

In preparing my preliminary plan for next year's convention, I need to know how many White House staff we may be required to accommodate with rooms, transportation, tickets, etc.

No doubt a number of key staffers will be involved in the convention campaign and, of course, those will be included in our early plans.

I personally feel that all commissioned personnel are entitled to be present whether or not they are actively engaged in the convention. ~~or not~~. This would be a morale booster, give staff a greater insight into politics, and serve as "crowd fillers" for selected events.

003352

RECOMMENDATION:

That I include plans for having all commissioned White House staff attend the '72 Convention.

APPROVE _____ DISAPPROVE _____

OPTIONS:

If the recommendation is disapproved, then

1. Only those staff who can make a contribution to the Convention _____

If the recommendation is approved, then

1. Include male staff down through staff assistant level _____

June 25, 1971

MEMORANDUM FOR: H.R. HALDEMAN

FROM: GORDON STRACHAN

SUBJECT: 1972 Convention Site

Technically the RNC will decide on the site for the 1972 Convention on July 22-23, based on the last Site Committee meeting and recommendation of July 21; so the specific, technical answer to your question as to the final date for a decision on the 1972 Convention site is July 21.

However, Timmons, who as Chairman of the Attorney General's task force on the Convention has developed scenario that requires a firm decision earlier:

1. Late today, Timmons will submit his analysis of Chicago; 003527

2. Next week, Timmons will meet with Dole to determine the Site Committee's preferences; and will submit to you and the Attorney General a formal decision paper. This paper will attach the formal bid by San Diego, which is expected to be $500,000 in cash and $1,000,000 in inflated price services;

3. Upon decision by the President on the location of the Convention, Timmons hopes to relay this to Dole, who will in turn have the Site Committee decide on the same location;

4. If the location is San Diego, Timmons suggests that Dole, during the San Clemente trip, formally advise the President and then immediately make the announcement to the media;

5. If San Diego is not chosen, the same scenario would be followed except that there is no need to make the announcement from San Clemente.

GS:lm

THE WHITE HOUSE

WASHINGTON

CONFIDENTIAL

June 29, 1971

MEMORANDUM FOR: H.R. HALDEMAN

FROM: GORDON STRACHAN G

SUBJECT: 1972 Convention Site

Magruder delivered the 1972 Convention Site decision paper to the Attorney General today. Your copy is attached.

As you know, Magruder and Timmons have developed a scenario that the Attorney General told you on June 23rd he would slow down until the President has had an opportunity to give serious thought to San Diego.

The decision paper offers the facts for the President's consideration and recommends that San Diego be selected as the site for a three day convention beginning August 21, 1972.

003385

To summarize:

1. The Democrats announced today that their convention will be held in Miami Beach beginning July 9, 1972. Miami Beach bid $950,000 for the honor.

2. Bids for the Republican Convention have been received from cities which are listed in the order of preference: San Diego, Miami Beach, Houston, Louisville, Chicago, and San Francisco.

3. The Summer Olympics will be held in Munich beginning the last week of August. Therefore, the 1972 Convention should begin on August 21, 1972 and continue for three days.

CONFIDENTIAL/EYES ONLY

June 26, 1971

MEMORANDUM FOR: THE ATTORNEY GENERAL
H. R. HALDEMAN

FROM: JEB MAGRUDER
WILLIAM TIMMONS

SUBJECT: 1972 Convention

This paper with its attachments is a summary of information relating to decisions that should be made immediately regarding the 1972 Republican National Convention. We make three recommendations:

1. That San Diego be selected as the site city
2. That the Convention start August 21, 1972
3. That it be a three-day Convention

003386

We suggest you discuss these topics, at the earliest opportunity, with the President to get his guidance. When resolved, Chairman Bob Dole should be notified so he can engineer his Site Committee to make identical recommendations to the President. Later, Dole should meet with the President to advise him of the Committee's views, giving the President an opportunity to concur. Should San Diego be selected, this meeting might be considered for San Clemente the first week in July.

I. DEMOCRATS

Every available signal is that the opposition will hold its national convention in Miami Beach, starting on July 10, 1972. While Miami has good facilities, hotels and vacation atmosphere, the Democrats are probably more interested in the security aspects of Miami as a result of the '68 riots in Chicago.

II. REPUBLICANS

Bob Dole is Chairman of the Republican National Committee Site Selection Committee. The Committee membership is listed in Tab A. Bids have been received from:

[illegible] ONLY

-- San Diego
-- Miami Beach
-- Chicago
-- Houston
-- Louisville
-- San Francisco

Committee visitations have been made to all cities except San Francisco. An analysis of each city's bid and some pro and con arguments of the various sites are in Tab B.

Since the President will control the Convention machinery and can schedule events to fit television prime time, media coverage is not a significant factor in site location. Presumably we will try to target time for maximum exposure, and this can be done by a little earlier program on the West Coast or a little later on the East Coast.

Also, while we question the argument that site location helps deliver a state's electoral votes to the Party, it certainly is a false issue for regular convention cities such as Chicago, Miami and San Francisco.

Facilities, security, a healthy "upbeat" atmosphere, confidence and control are important considerations to site location.

The Site Committee will make its formal recommendation to the full Republican National Committee at the Denver meeting on July 23. It is expected that the RNC will ratify the recommendation without difficulty. Additionally, Dole has indicated he recognizes that the President will call the shots on the Convention.

003387

III. DATE OF CONVENTION

The Republican National Committee, Justice Department and White House counsel agree that a September convention would be too late to guarantee that the nominees can legally be placed on the ballots in a number of states. While some waivers may be possible, a September Convention cannot be considered. The Summer Olympics start in Munich, Germany the last week in August, and ABC has exclusive coverage and a commitment to carry events in prime time. ABC officials say that is locked in and it would be difficult for their crews and equipment to cover a convention the last week in August. Also, it is felt we would lose a substantial audience if the Convention were to compete with the Olympics. Therefore, August 21 appears to be the latest date the Convention could start considering the circumstances. The RNC favors the Convention for this period.

CONFIDENTIAL/[illegible] ONLY

IV. THREE-DAY CONVENTION

Historically, both parties have held conventions varying in length from two days to five days. A four day convention has been the most popular. Because of the expected renomination of the President, a shorter Convention is felt appropriate for 1972. This would help eliminate delegate and public boredom and leave fewer opportunities for the media to emphasize Republican differences, demonstrators, etc. On the other hand, official business can hardly be condensed to fewer than three days. It is anticipated the sessions might be divided as follows:

Monday, August 21 Morning First Session	Convening Committees appointed Temporary Chairman
Monday, August 21 Evening Second Session	Keynote Address Permanent Chairman
Tuesday, August 22 Morning Third Session	Reports of Platform Rules, Credentials, etc.
Tuesday, August 22 Evening Fourth Session	Nomination Speeches and election of candidates
Wednesday, August 23 Evening Fifth Session	Acceptance Speeches

003388

The principal change in this agenda schedule is that normally the committee reports, including Platform, are held during evening prime time on the second day. With an incumbent Administration, it is felt this event could be held in the morning even though we are exploring ways (films?) to make the platform more interesting and attractive. The RNC favors a four day convention because of anticipated hotel commitments to the host city and fear emergencies may require longer individual sessions.

We urge adoption of our recommendations.

1. San Diego as site

APPROVE _____ DISAPPROVE _____

2. Start August 21, 1972

APPROVE _____ DISAPPROVE _____

3. Three-Day Convention

APPROVE _____ DISAPPROVE _____

CONFIDENTIAL/EYES ONLY

COMMITTEE ON SITE

FOR THE

1972 REPUBLICAN NATIONAL CONVENTION

(Appointed February 5, 1971)

Robert J. Dole, Chairman
Mrs. Jack L. Stacy, Vice Chairman

Mrs. Jean McG. Boese, Member
Republican National Committee
831 City Park Boulevard
Alexandria, Louisiana 71301

Robert A. Marden, Member
Republican National Committee
44 Elm Street
Waterville, Maine 04901

George Thiss, Chairman
Minnesota Republican State Central Committee
Member, Republican National Committee
4940 Viking Drive
Minneapolis, Minnesota 55435

Mrs. Keith McHugh, Member
Republican National Committee
10 Gracie Square
New York, New York 10028

D. Jack Gibson, Member
Republican National Committee
Post Office Box 1233
Sioux Falls, South Dakota 57101

Mrs. Jack L. Stacy, Member
Republican National Committee
Post Office Box 96
Douglas, Wyoming 82633

003389

Fred C. Scribner, Jr., 465 Congress Street, Portland, Maine 04111, General Counsel of the Republican National Committee, will serve as General Counsel of the Committee on Site.

SAN DIEGO

AVAILABILITY: August date is okay.

HALL: Seats 15,000. Will require temporary facility for network and service organizations.

BID: $1,500,000 in cash, goods & services.

HOTELS: Can meet 18,000 requirement, some rooms better than others. Short on parlors.

SECURITY: Good local police force and state patrol. Military installations close by. Access to hall is good.

ARGUMENTS:

PRO:
-- Republican Governor (Reagan)
-- Republican Congressman (Wilson)
-- Close to Western White House
-- Outstanding climate
-- New, non-convention city
-- Emphasizes GOP interest in Western votes
-- Best money bid
-- California has most delegates and most electoral votes
-- Many things for delegates to do
-- Outside, wholesome atmosphere
-- Copley papers

003391

CON:
-- Democratic Mayor (up for re-election this year)
-- City never handled big riots
-- Shortage of parlors
-- Construction of temporary facility next to hall
-- Possibility of Reagan candidacy
-- Internal competition between Reagan and Finch forces
-- Proximity to Watts & Berkeley could assure demonstrations
-- Arnhold Smith IRS problems
-- Must have earlier sessions to accommodate national prime time
-- Aerospace unemployment
-- Considered a non-union town

CONCLUSION: By far the best of bidding cities. Security is main concern.

22.13 ATTACHMENT TO MAGRUDER/TIMMONS MEMORANDUM

MIAMI BEACH

AVAILABILITY: August date is okay

HALL: Seats 16,000. Excellent hall.

BID: In neighborhood of $600,000 in cash, goods and services.

HOTELS: Good rooms and parlors in sufficient numbers. However, they are stretche out with only one artery.

SECURITY: Excellent because of geography.

ARGUMENTS:

PRO:
-- Close to Key Biscayne
-- Sentimental return to '68 site
-- Lot for delegates to do; beaches
-- Best security of all cities
-- Easier for media to cover both conventions

CON:
-- Hurricane season
-- Old hat; nothing new
-- Public boredom of having two conventions in same city
-- Democratic Governor and Mayor
-- Afraid of riots; seek shelter
-- Not truly a "southern" city
-- Local Cuban competition
-- Have had racial problems
-- Must have later sessions to accommodate nation prime time

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CONCLUSION: Second best choice

HOUSTON

AVAILABILITY:	Possible in August subject to rescheduling of baseball games.
HALL:	Astrodome is too large but Astrohall has 15,000 seats. Modern facilities.
BID:	No firm offer made.
HOTELS:	Limited. Must utilize rooms far away from hall.
SECURITY:	Probably adequate.

ARGUMENTS:

PRO:
- -- A new convention site
- -- Will influence Texas and southern votes
- -- Republican Senator (Tower) and one local Congressman (Archer).
- -- Midwest television time
- -- Central geographical location
- -- Few demonstration problems

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CON:
- -- Democratic Governor
- -- LBJ image covers Texas
- -- Hot and humid climate
- -- Not much for delegates to do
- -- It was apparent to the Site Committee that Houston was not genuinely interested in attracting the convention and refused to cooperate. If Houston is chosen, it will require a great deal of RNC staff work to get a decent bid.

CONCLUSION: "Dark Horse" third choice but harder negotiations required.

LOUISVILLE

AVAILABILITY: Anytime we want it.

HALL: New, excellent downtown facility.

BID: Open to negotiation; no firm offer.

HOTELS: Extremely limited; probably have to house in other states.

SECURITY: Probably adequate but untested.

ARGUMENTS:

PRO:
-- New convention city
-- Helps with southern and border states votes
-- Republican Governor (election this year) and two Senators (Cook & Cooper)
-- Small town heartland America
-- Kentucky bourbon

CON:
-- Housing and transportation limited
-- "Why Louisville?"
-- Nothing for delegates
-- The Site Committee feels Louisville is not sincere in its bid, which was instigated by Col. Sanders of chicken fame and a group of aggressive Jaycees who are part of the Democratic Mayors best supporters.

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CONCLUSION: Not enough pluses to offset liabilities.

CHICAGO

AVAILABILITY: August date would require moving American Legion convention. This may be possible.

HALL: 12,000 seats -- a little small. In black ghetto section.

BID: The required $800,000 anyway we want it.

HOTELS: Excellent number of rooms and parlors.

SECURITY: Police good and have riot experience.

ARGUMENTS:

PRO:
-- Republican Governor (Ogilvie)
-- Midwest location
-- Transportation center
-- GOP can do what Democrats couldn't.
-- Good prime time coverage for nation
-- Big City atmosphere

CON:
-- Red flag to demonstrators
-- In Daley's hands
-- Have been there before
-- Governor Ogilvie is opposed
-- Chicago is not truly representative of Heartland America
-- Not much new for delegates
-- Racial and unemployment problem
-- Hot, humid climate

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CONCLUSION: The risk is too great for any marginal benefit.

SAN FRANCISCO

AVAILABILITY:	Undetermined
HALL:	Cow Palace seats 14,000 but is far from city
BID:	No offer made. Felt could raise $300,000.
HOTELS:	Tourist season. Hard to commit.
SECURITY:	Not Good. Center of dissent and unrest.
ARGUMENTS:	No body considers San Francisco a possibility in light of above and other factors.
CONCLUSION:	Absolutely out of question!

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22.13 GORDON STRACHAN MEMORANDUM, JUNE 25, 1971

THE WHITE HOUSE

CONFIDENTIAL

WASHINGTON

June 25, 1971

MEMORANDUM FOR: H.R. HALDEMAN

FROM: GORDON STRACHAN G

SUBJECT: 1972 Convention Site

Technically the RNC will decide on the site for the 1972 Convention on July 22-23, based on the last Site Committee meeting and recommendation of July 21; so the specific, technical answer to your question as to the final date for a decision on the 1972 Convention site is July 21.

However, Timmons, who as Chairman of the Attorney General's task force on the Convention has developed scenario that requires a firm decision earlier:

1. Late today, Timmons will submit his analysis of Chicago;

2. Next week, Timmons will meet with Dole to determine the Site Committee's prererences, and will submit to you and the Attorney General a formal decision paper. This paper will attach the formal bid by San Diego, which is expected to be $500,000 in cash and $1,000,000 in inflated price services;

3. Upon decision by the President on the location of the Convention, Timmons hopes to relay this to Dole, who will in turn have the Site Committee decide on the same location;

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4. If the location is San Diego, Timmons suggests that Dole, during the San Clemente trip, formally advise the President and then immediately make the announcement to the media;

5. If San Diego is not chosen, the same scenario would be followed except that there is no need to make the announcement from San Clemente.

THE WHITE HOUSE
WASHINGTON

June 30, 1971
12:46 p.m.

PHONE CALL
SENATOR DOLE (Opr.)

(1) Timmons indicates he wants to talk about the Convention.

(2) He has been invited to go to K.C. but has not accepted.

(3) He indicated to Timmons that he wanted to talk to the P about the convention while on the airplane to K.C.

LH

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